UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649 (RDD)

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

June 16, 2021

10:19 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: ART

HEARING re Notice of Agenda/ Agenda for June 16, 2021

HEARING re Motion to File Proof of Claim After Claims Bar Date with hearing to be held on 6/16/2021 at 10:00 AM at Teleconference Line (CourtSolutions) (RDD) (related document(s)2834).

HEARING re Letter re: motion to file proof of claim after the bar date & reporting problems connecting to May 14, 2021 hearing (related document(s)2834) (ECF #2899)

HEARING re Statement I Notice of Filing of Proposed Order Granting Late Claim Motion (related document(s)2834) filed by James I. McClammy on behalf of Purdue Pharma L.P. (ECF #3011)

Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al
HEARING re Motion to Extend Time I Motion to Extend the Preliminary Injunction (ECF #269)

HEARING re Memorandum of Law in Support of Motion to Extend the Preliminary Injunction (related document(s)269) filed by Benjamin S. Kaminetzky on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma

Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. (ECF #270)

HEARING re Objection to Motion I CONTINUING OBJECTION AND VOLUNTARY COMMITMENT IN RESPONSE TO PURDUE'S MOTION TO EXTEND THE PRELIMINARY INJUNCTION (related document(s)269) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States. (ECF #272)

HEARING re Reply to Motion /Reply Memorandum in Further Support of Motion to Extend the Preliminary Injunction (related document(s)269) filed by Benjamin S. Kaminetzky on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Trartsdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. (ECF #273)

HEARING re Application for Appointment of Chapter 11 Examiner filed by Jonathan C Lipson on behalf of Peter Jackson (ECF #2963)

HEARING re Opposition / Debtors' Opposition to Motion for Order to Appoint an Examiner (related document(s)2963) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #3020)

HEARING re Opposition to Peter W. Jackson's Motion for Order to Appoint Examiner (related document(s)2963) filed by Todd E. Phillips on behalf of Multi-State Governmental Entities Group. (ECF #3021)

HEARING re Objection to Motion I Ad Hoc Committee's Objection to Motion to Appoint an Examiner (related document(s)2963) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #3022)

HEARING re Objection /Objection of the Official Committee of Unsecured Creditors to Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document(s)2963) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #3023)

HEARING re Reply Memorandum of Law (related document(s)2963) filed by Martin S. Rapaport on behalf of Peter Jackson. (ECF #3034)

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P R O C E E D I N G S

THE COURT: Okay, good morning. This is Judge Drain. We're here in In re: Purdue Pharma, LP. I have the agenda for today's hearing, and I'm happy to go down the calendar, in the order of the agenda.

MR. HUEBNER: Terrific. Good morning, Your Honor. Can you hear me clearly?

THE COURT: Yes, and see you.

MR. HUEBNER: Well, probably better just to hear me. So, the first item on the agenda -- there are three items on for the agenda today. The first is an uncontested claims related matter that my colleague Ms. Jacquelyn Knudson will be handling, so if I may turn over the virtual podium to her.

THE COURT: Okay, that's fine.

MS. KNUDSON: Morning, Your Honor. For the record --

THE COURT: Morning.

MS. KNUDSON: -- Jacquelyn Knudson of Davis, Polk, and Wardwell on behalf of the Debtors. Can you hear me clearly?

THE COURT: Yes. Fine, thank.

MS. KNUDSON: Excellent. As set forth in Mr. Cobb's motion, he's been incarcerated for the past 17 years. He notes that he has no access to a computer and the

internet and is not allowed to make toll-free calls. He also cited COVID-19 lockdowns of the prison as an additional reason for his untimely claim. Based on these assertions, we believe there's a colorable basis for granting Mr. Cobb's requested extension.

Moreover, given the limited number of late claim motions filed to date, and the fact that the proposed order preserves the trust's ability to review the merits of Mr. Cobb's claim, and also, in an effort to avoid the undue cost of litigating this motion, we believe the proposed order is a reasonable resolution.

As we've done in the past, we also consulted with both the Creditors Committee and the Ad Hoc Group of Individual Victims, and they have both consented to the relief requested. I'm happy to answer any questions Your Honor may have. Otherwise, in light of the foregoing, the Debtors (sound drops) at Docket No. 3011 be entered.

THE COURT: Right. I don't have any questions. The Debtors' decision, which is unopposed, to grant the late claim motion, is warranted here under Rule 9006, and Pioneer, it's clear to me that Mr. Cobb's failure to file a timely proof of claim is based on excusable neglect. It really isn't, one would say, neglect, so much as the fact that he's, as you said, incarcerated, has very limited access to the means to file a claim, and he diligently tried

to do so. So, under all those circumstances, I'll grant the I'll enter the order granting the motion, which, as I note, and as you've noted, makes it clear that this shouldn't be read as any sort of overall authority to file a late claim.

MS. KNUDSON: Yes, Your Honor. Thank you.

THE COURT: Okay. So, you can email that order to chambers.

MS. KNUDSON: Thank you, Your Honor. We will.

THE COURT: Okay.

MR. HUEBNER: And Your Honor, as I think the Court knows, this is the approach we've really taken with everybody, you know, even where it requires a bunch of work from the Debtors, the UCC, and other parties. We're really trying very hard (sound drops) and circumstances where we think it's appropriate (sound drops) you know, not (sound drops) circumstances, including incarceration, but I think that we have worked very hard (sound drops), and I'm glad that no parties are objecting to resolutions like this, the relief (sound drops).

The second item on the agenda, Your Honor, I, at least, intend to be extraordinarily brief. You know, as the Court, obviously, will know, the disclosure statement is out as we speak for a vote or in the process of getting out with thumb drives and documents being printed, our confirmation hearing is now out, weeks away.

We actually feel quite strongly, along with, obviously, many other parties, that we need (sound drops) to get us to confirmation, but obviously, having, you know, merely a few weeks before confirmation, while we very much hope that a subset, and ideally, in a fantasy world, all of the Nonconsenting States come into the deal, we cannot agree with their petition that if their mediation fails, the injunction ends and, essentially, you know, everything we've been working for is put onto a radically different track, especially days before the confirmation hearing from (indiscernible) to get to confirmation clearly is the right answer.

We note that the (indiscernible) the injunction requested is supported by virtually every party in the case, implicitly or explicitly, and opposed only by the NCSG. They have, graciously, been brief in their pleadings. We were graciously brief in our reply. We have no problem with continuing to construct a voluntary compliance as opposed to, obviously, a mandatory injunction, and with that I would propose to rest on the papers.

THE COURT: Okay. All right. And I believe there was only, as you say, the one objection to the motion, which, as I read it, was a limited objection as to the duration of the extension of the preliminary injunction, and that was by the Nonconsenting States Group. Mr. Troop, do

you have anything further to say in support of the objection?

MR. TROOP: Thank you, Your Honor. Can you hear me clearly?

THE COURT: Yes, and see you.

MR. TROOP: Thank you. Your Honor, I really don't have anything terribly substantive to say in addition to what's in our pleadings. The practice in this case has been to keep people on short leashes in connection with the mediations that are ongoing, and deadlines coming back to you pending (sound drops).

So, it seemed to me, simply from a (sound drops) the NCSG, simply from a perspective of good case management, that not waiting until confirmation to be back before you, might result in something that changes your mind with regard to the preliminary injunction, or might not, and that, given the way that the hearings on the preliminary injunction have condensed themselves over time, it did not seem a terrible imposition to doing the process.

So, Your Honor, with that, I otherwise rest on our papers. Thank you.

THE COURT: Okay. So, let me be clear, Mr. Huebner. The proposed extension would go through the date of the scheduled confirmation hearing?

MR. HUEBNER: I think that's right, Your Honor. I

actually apologize. I don't have the proposed order in front of me. I think that the structure was designed to get us through confirmation --

THE COURT: Mr. Troop is raising his hand. It's --

MR. TROOP: 8/30. I think it's August 30th, the stay request.

MR. HUEBNER: Yeah --

THE COURT: Which is the date of the hearing, right, or is the hearing the 28th?

MR. TROOP: The hearing starts on the 9th and I believe --

THE COURT: An extra day is reserved.

MR. TROOP: Extra day reserved.

MR. HUEBNER: Yeah.

THE COURT: All right. Well, I -- obviously, no one has objected to extension of the injunction, at least through the date of the ongoing mediation. The issue is whether I should extend it further through the confirmation hearing, which would be the reserved dates for that hearing. Frankly, I think the unusual circumstance that would argue for not doing that, would be a turn of events at the confirmation hearing that would suggest that a plan that contemplated a settlement that would include a substantial payment by the Sackler families would not be confirmed, and

that no similar plan would be confirmed.

That is, of course, certainly possible. However, it seems to me, given the need to have some control over where the case would go after that, I think having it through the scheduled dates is warranted, even if I concluded, for example, earlier than that, because the confirmation hearing wouldn't run through the 30th, that I wouldn't confirm the plan.

I still think there's probably a worthwhile basis to have an injunctive pause for a few days, up to August 30th, for everyone to get their bearings, and I think the parties' focus, in addition, obviously, to being on the mediation, should be on preparing for the confirmation hearing, rather than adding the potential litigation over the preliminary injunction to that hearing, so I will grant the motion through the last date scheduled for that hearing, for the reasons that I've previously granted extensions and, as affirmed by then Chief Judge McMahon, I believe that the injunction is warranted.

The issue raised was the timing issue, which I've just separately addressed. In terms of the balancing of the harms over the timing issue, it seems to me that a focus on the mediation and confirmation litigation is the key focus at this time, rather than an additional focus that might take place after the mediation, if the mediation is not

wholly successful on litigation over the preliminary injunction.

So, I will grant the requested extension, again, with the language that has been agreed pertaining to the Nonconsenting States, as reiterated in their limited objection to this extension motion. So, you can email that order to chambers, Mr. Huebner.

MR. HUEBNER: Thank you, Your Honor.

THE COURT: Okay.

MR. HUEBNER: Your Honor, the third item on the agenda, and final item on the agenda, is the motion filed by Professor Lipson seeking employment of an (sound drops). It is his motion, so I would turn the podium over to him.

THE COURT: Okay.

MR. LIPSON: Thank you, Your Honor. Jonathan Lipson for Peter Jackson. Can you hear me and see me, Your Honor?

THE COURT: Yes, I can, thanks.

MR. LIPSON: Thank you. Fifteen years ago, Peter and Ellen Jackson lost their daughter, Emily, after she ingested a single OxyContin pill, went to sleep, never woke up. Since that time, the Jacksons have struggled to understand how and why this happened, who was responsible, and how it could be prevented in the future.

Today, they find themselves, like thousands of

creditors in this case, confronting a process -- this Chapter 11 case -- that is, to them, opaque and byzantine. Like many creditors in these cases, the Jacksons worry that the owners of the Debtors, the Sackler families, may have manipulated this process to obtain releases that will, once granted, almost certainly make it impossible to learn any more about the secretive family that has controlled the Debtors.

As explained in our motion and reply, there is reason for concern. The Debtors' objection practically concedes that the board of directors that made this decision shortly before bankruptcy was not independent of them, and there's evidence from the Debtors' own --

THE COURT: Which decision are you discussing, Mr. Lipson?

MR. LIPSON: The decision to release the Sacklers.

THE COURT: And you contend that that decision was a binding decision and, in essence, controlled bankruptcy process, correct?

MR. LIPSON: I contend that it had a significant and undue -- may have had a significant and undue influence.

THE COURT: And what is your evidence for that?

MR. LIPSON: The evidence is the Debtors' own statements, involving things like the historic control that --

THE COURT: No, no. I'm saying controlling the bankruptcy process.

MR. LIPSON: So --

THE COURT: Your evidence on that point. Well, let me start with a basic question, Mr. Lipson. What is the examination by the proposed examiner that you would propose here? It is, in my view, to use your phrase, (indiscernible) and byzantine. So, let's be clear. What are you seeking here, to have the examiner examine?

MR. LIPSON: The process by which the board of directors of Purdue Pharma --

THE COURT: The entire process, from beginning to end?

MR. LIPSON: The Sackler board negotiated --

THE COURT: There is no Sackler board, all right. There's a Purdue board. Listen, you're a law professor, right? Words are important to lawyers, right? So again, I go back to, what is the examination that you are seeking here? Because that is how I am going to review your request for relief. In your reply, which came in at 9:30 last night, you state, at one point, that you seek a determination --

MR. LIPSON: Your Honor, if I may help you, I can tell you in very simple terms what we're trying to have an examiner --

THE COURT: Okay. That's probably a good idea, because what I was going to go through is the various points where you seek different relief, not only in the initial motion, but in the reply, so you tell me now, what is the relief you're seeking?

MR. LIPSON: We simply want to know whether the process by which the board of directors of Purdue Pharma, during this case, and shortly before this case, to release the Sacklers, was free of influence by the Sacklers. We know that these are privately --

THE COURT: So, let's -- let me stop there, because this is important --

MR. LIPSON: -- according to the Debtors' own disclosure statement --

THE COURT: Please. You want to know whether the process was free from the Sacklers' influence, right? That's what you want to investigate, whether the people on the board who made the decision, as embodied in the plan that's before the Court, were independent of the Sacklers. That's what you're looking for.

MR. LIPSON: That's correct, and would you like me to tell you why we are concerned --

THE COURT: No, no. I want to first know what the relief is.

MR. LIPSON: The relief is just that, Your Honor.

THE COURT: Just that.

MR. LIPSON: And not even to do an independent investigation. We assume that the Creditors Committee in this case has done this investigation, because they say so in their plan support letter. But what they haven't done, by virtue of the protective orders and confidentiality stipulations in this case, is revealed their analysis. So, creditors, like Mr. Jackson, are outside, not able to understand all of the red flags --

THE COURT: No, but, again, I -- this goes to, again, the relief you are seeking. Your pleading is replete with allegations about an inadequate, you contend, investigation of the "Sackler allegations," which, by the way, you also don't define; although, when you appear to define them on the first page of your pleading, they appear to be allegations about criminal conduct by the Sacklers, which is an odd thing, since that's not the subject of this bankruptcy case, this not being a criminal case.

But, let's skip over that for a moment. And that is a point that, I think, you may well have misled the public over, because you lump that concept into a review, which you say you're comfortable that the Committee has done as far as the potential liability of the Sacklers in a civil respect, i.e., for money, not criminal liability, but for money, to the Debtors' estates and creditors, and

separately, to potential third parties, with respect to their claims against the Sacklers.

That's not what you want to have investigated, right. What you want to have investigated is whether the board, and more specifically, the independent committee of the board, that the Debtors say was charged with approving the plan, was independent, right? So, I guess, my question on that is, you've couched that specifically in that way, and that is relatively easy to investigate, one way or another.

You look at the board's independence. You look at the people who are on the board. You talk to them. You look at the -- any limitations on their independence, either actual, in terms of corporate governance, or de facto, and you get a result. Are they under the influence of or unduly influenced by the Sacklers? On the other hand --

MR. LIPSON: Your Honor --

THE COURT: -- there are times when you say you want to investigate the board's whole process in negotiating a settlement. And to me, that is entirely open ended, because that results in an investigation of all of the twists and turns, and we know there have been many -- in fact, they were not resolved until the morning of the file hearing on the disclosure statement leading to a plan that the Debtors were actually prepared to go forward with.

That involves, in my view, and extensive, unnecessary, and microscopic view of each decision along the way as to whether to make a negotiating point here or there or elsewhere.

MR. LIPSON: Your Honor, would you like me to argue the motion or --

THE COURT: No, I'm asking a question about what the motion is about, so do you want to do that? Do you want to have the examiner review that entire process? No.

MR. LIPSON: No.

THE COURT: Okay.

MR. LIPSON: We want to understand whether or to what extent the Sackler families, who, at least until November of 2019, apparently have the power to remove members of the Special Committee. It's not an independent committee, Your Honor. It's a Special Committee, which, of course, might affect their capacity to be independent. We know, during these cases, that the -- it appears the Debtors' own lawyers and lawyers for the Sacklers have entered into a common interest agreement, so to just settle with the U.S. Trustee, is very difficult to understand how the Debtors and the Sacklers could have a common interest at this point.

On your point about our claims about the inadequacy of the investigation, our whole point, Your

Honor, is we have no idea whether the investigation was inadequate. I do not believe we said that. What we're saying, is that this is a case of extraordinary public interest, and in case of extraordinary public interest, Congress said very clearly, examiners must be appointed to conduct appropriate investigations of wrongdoing and other potentially --

THE COURT: But you have -- all right, that's fine --

MR. LIPSON: We have found --

THE COURT: I'm just trying to figure out what you are contending is the appropriate investigation. I think I have that answer now, which is determine -- to determine or investigate whether the Special Committee, which I gather made the decision to authorize the Debtors to seek confirmation of the plan that is before the Court, did so on a basis independent of the Sacklers.

MR. LIPSON: Correct, and that is in ii of our order, Your Honor.

THE COURT: Well, I understand, but your order covers other -- can be read more broadly than that, but this is what you are seeking.

MR. LIPSON: Your Honor, if that is correct, and if you are comfortable with narrowing it that way, I think we can -- we may well be amendable to that, because that is

our underlying concern. As you know, Your Honor, contrary to what you just said, I am not the one creating concern about the Sacklers. The Sacklers have been the subject of scrutiny and concern for many years. Mr. Jackson testified in 2007 at the sentencing hearing, only to learn that it turned out -- according to some, we don't know -- that the Sacklers had allegedly manipulated the legal and regulatory process to shield themselves.

Many claims of this sort have been made. We're not citing those, but the facts in this case, the Debtors' own claims that the Sacklers were the de facto CEOs of a company that has now pleaded guilty a second time --

THE COURT: They don't say that as far as the bankruptcy, period. Right? Do you have any evidence to say that that statement, or any of the statements in connection the plea agreement, pertain to the period after these Debtors filed Chapter 11?

MR. LIPSON: Not that statement, Your Honor, but that is not --

THE COURT: Do you have any evidence to support the idea that the Sacklers have been the de facto management of these Debtors, since the commencement of the Chapter 11 case?

MR. LIPSON: De facto management since the Chapter 11 case? No, Your Honor, but that --

THE COURT: Or de -- all right. Then, my next question. Do you have any evidence that they were the de facto board of these Debtors since the commencement of the Chapter 11 case?

MR. LIPSON: I think that is unclear. If they had the power to remove the board --

THE COURT: What evidence do you have on that?

MR. LIPSON: The Debtors' own admission that they had to eliminate the power that the Sacklers had to remove the directors in November of 2019. And more importantly, Your Honor, that the governance documents of these Debtors are not public. We have never seen their bylaws. We have no idea what residual powers the Sacklers may or may not have been able to wield over --

THE COURT: Okay, that's fine. That's a relatively easy thing to figure out, right?

MR. LIPSON: Correct.

THE COURT: In fact, one could've --

MR. LIPSON: That's why we say --

THE COURT: -- a 2004 request to do it, instead of making a motion for an examiner, but nevertheless, that's a relatively easy thing to figure out.

MR. LIPSON: Right. This is why we say, this should be a fairly painless and easy process, if, in fact, the process has been free of undue influence by the

Sacklers. But it is important, Your Honor, to understand that the motivation here is not Mr. Jackson's own litigation position only. He's concerned about the integrity of this process, and that is why --

THE COURT: Well, let's go to that, all right? Because as the judge, I actually do get to ask these questions of you.

MR. LIPSON: Of course.

THE COURT: Do you ever watch the History Channel?

MR. LIPSON: I do not, Your Honor.

THE COURT: Okay. Well, they have some good programs on it, but a lot of their programs go like this. They show an image that's kind of cool, of something, like the Nazca lines or a marine --

MR. LIPSON: I'm not familiar with that, Your Honor. Sorry.

THE COURT: A marine mine for a ship, and then they say, "Some people say there are questions about the origins of these." And then, they go on to ask the questions, without any evidence, although -- other than saying some people ask. I refer to pleadings that do the same thing, as History Channel pleadings.

They say, "some people raise questions," or "some people ask the following," or "some scholars say," and then they try to link all that together, without evidence to

reach a conclusion. So other than the board issue, are you pursuing any of those points today? Because if you are, I need to pursue them with you. If you're not, if you basically eschew them as to "your general contentions" that some people have questions about the conduct of this case, I will pursue them with you, and we'll get to the bottom of it right now, as to your basis and your logic on it.

MR. LIPSON: As we say in our motion, we are not asking for a secondary analysis of the underlying allegations of the Sacklers.

THE COURT: That's not my question. What else are you saying you want to deal with, as far as the questions you say have been raised about the conduct of this case, beyond the question that you say is now the only basis for your request for an examiner, which is to investigate the independence of the board in making a decision to propose for confirmation, the plan before me?

MR. LIPSON: Are you asking me what the basis for that --

THE COURT: No, I'm asking you if you want to explore anything else.

MR. LIPSON: I just said, no.

THE COURT: All right. So, all of these statements in your motion about, for example, the Committee or the Court -- and I do take this personally, sir -- not

being able to police the process and, implicitly, alleging that the Court is somehow biased, you're eschewing at this point? If not, we will go through them, sentence by sentence.

MR. LIPSON: Your Honor, those are examples of reasons for concern. They are not History Channel facts.

THE COURT: All right, then let's go through them.

MR. LIPSON: Your Honor -- fine. Would Your Honor please tell me where you are?

THE COURT: As soon as I get there.

MR. LIPSON: Your Honor, if I may, if I offended you --

THE COURT: No, no. It's not a question of offense. It's a question of actually making false or illogical allegations.

MR. LIPSON: I'm sorry, Your Honor. You said you took it personally, so I thought that that meant you were --

THE COURT: Well, I do, when my integrity is challenged.

MR. LIPSON: I'm not challenging your integrity.

THE COURT: Oh, really? Really, you're not?

MR. LIPSON: Absolutely not, Your Honor.

THE COURT: Uh huh. So, let's look at Page 17 of your motion. All right?

MR. LIPSON: I'm there.

THE COURT: Are you there? All right. You refer to the reluctance of parties -- and I think it's not just limited to the Special Committee, because you later refer to the Creditors Committee in this vein as well -- to "challenge the settlement framework in light of the insular nature of Chapter 11 practice." That's a quote. Then, you refer to two members of the Special Committee, Messrs. Miller and Buckfire, well-known, highly regard reorganization specialists.

Here's a -- okay, I appreciate you don't watch the History Channel, but here's the line. "Scholarship has found that large and complex reorganizations such as the Debtors' are often dominated by a small number of professionals and judges, who frequently appear in the same cases together."

And then, in Paragraph 37, you state, "It is not difficult to imagine that relationships among the members of the Special Committee and key participants in this case" -- I take it that means judges -- "may have affected the decision to settle or sue, whether conscious or subconscious."

Then, you cite a forthcoming paper, hasn't been published. I'm assuming that the editors of the Texas Law Review still retain some control over it, right?

MR. LIPSON: Believe so, Your Honor. I don't

know. You'd have to ask them.

THE COURT: And in fact, it is coming out, if ever, in 2022, as stated on their website, which your pleading directed me to, and I would think they would change it, since the professor who, I guess, unlike you, did not have the courage to join in this pleading, refers, as a basis for some of his statements, that the original version of the disclosure statement -- not the one approved, but the original version -- didn't discuss the Sackler issues in detail. You think the editors might want to change that and maybe other aspect of it?

In any event, you say, in this Law Review, because attorneys appear in front of a handful of judges, "This dynamic makes it imperative for these repeat players to ensure that they stay in the judges' good graces. They know that if they anger the judge by being zealous advocates in one case, they will bear the consequences the next time they appear before the judge, and worry that clients will not want to hire them."

To me, that suggests that they somehow know the judge is doing something improper and don't want to speak up and tell him. Is that what you are citing it for, that proposition?

MR. LIPSON: No, Your Honor, what I'm --

THE COURT: So, why are you citing -- what are you

citing it for?

MR. LIPSON: I'm citing it for the proposition that, as Professor Levitin, who is a national -- an internationally renowned scholar, says, in large bankruptcy cases, there is, in fact, empirically, a small number of law firms that appear over and over again, in front of a small number of judges, and there is a strong impetus to settle.

We are not challenging --

THE COURT: That's really not what the statement actually says. That says nothing about settlement. It makes the very odd conclusion, which, I don't know whether he's internationally recognized or not, that parties don't want to anger the judge, presumably by taking some position that's stupid -- because you've already said, it's not taking a position that disagrees with what they believe the judge is doing improperly -- not because it's a bad thing in that case, but for some future purpose.

It's hard to imagine anything more illogical than that, whether you're internationally recognized or not. Listen.

MR. LIPSON: I think --

THE COURT: I am in Court every day on matters large and small, perhaps, to Professor Levitin and you. They are each equally important to me, whether they're large or small, and I make the decisions based on the evidence before

me. I don't make them on the basis of who is appearing and who isn't appearing.

Just in this case alone, Davis Polk, which is the lead counsel, the whole firm has appeared in front of me in two cases in my almost 20 years on the bench. So, it's not really a repeat player. Mr. Kaminetzky, who is the only common person in those cases, Delphi and Frontier Airlines, won one and lost one. He neither angered me nor not angered me.

This statement is just simply a load of hooey, and you should know it. And if you're teaching law students contrary to that, if you're saying to them, judges and lawyers are somehow trying to conspire somehow -- although, this doesn't really say how -- to change the facts or the result and lawyers are hesitant to speak up and tell the judge that the judge is doing something wrong, you're in the wrong profession. All right?

MR. LIPSON: Your Honor, can I address this?

THE COURT: Yes, you should, because this is just shocking to me. But I will go one further, because you also have a footnote here. You say, Mr. Miller, for example, apparently bragged about napping in Judge Drain's chambers, in a book he wrote, right? Well, if he was napping in my chambers, he was curled up on the floor, because I don't have a couch.

I think, if you actually read it and talked to Mr. Miller, you would understand that what he was talking about is that during the Delphi case -- a case which, at that moment, was requiring people to work around the clock, day after day, because of the impending collapse of GM and the auto industry -- he was falling asleep in settlement conferences and at hearings, and he, in this book referenced that and apologized for it.

So, you have slandered him in that paragraph. Why? I have no idea, because it doesn't relate at all to the relief you're seeking, but it does make a nice headline, right, which is what I think you and Mr. Levitin are looking for here, if I can engage in some History pleading. Now, you can respond.

MR. LIPSON: Are you done?

THE COURT: I am done.

MR. LIPSON: Thank you, Your Honor. So, the first point is that the question of forum shopping in this case, is a live one, because the Debtors' board, when dominated by the Sacklers, changed their corporate governance documents to make it possible to file, in your Court, at the last possible moment.

Now, we don't think that this goes to your integrity at all, and if I offended you in any way, I am deeply sorry. I have nothing but respect for you and for

this Court. Nor am I accusing any of the lawyers, nor do I believe mister -- Professor Levitin has accused any of the lawyers of corruption. I don't use that word. I don't believe he uses that word.

THE COURT: He does, in fact, and you just used the word "questions," which, to me, is just as bad.

MR. LIPSON: What we are concerned about and what we say in our --

THE COURT: Right. Concerns, questions, issues.

MR. LIPSON: Yes, concerns, questions, and issues that Congress created the position of examiner to address. We're not making this up, Your Honor. These are in the Debtors' own public statements, after a long, long time of similar concerns, similar questions, involving a family that has been aggressively secret. So --

THE COURT: You haven't said what the "this" is.

MR. LIPSON: Your Honor --

THE COURT: You just said, it's not manipulation of the Chapter 11 case. It's not actions of the lawyers or the judge in the Chapter 11 case, so what is the "this" that you're referring to?

MR. LIPSON: The "this" is a strong bias to get a deal done, and the reason that's a problem here, Your Honor, is because I think many people in this case, including Mr. Jackson, believe that the parties have viewed this case as

choice between the money or the truth. And you, yourself, have said, well, trials are not truth serums. We're not going to get the truth here, and that's right. We know there's going to be a document repository. We don't know what's going to be in it.

But of course, that will come into existence only after the Sacklers have been released, so this is the last best chance this Court has to address concerns about the Sacklers and their capacity to manipulate the legal system that has dogged them for many, many years.

THE COURT: Although, you're not actually seeking that relief.

MR. LIPSON: That's exactly the relief --

THE COURT: What they have done in the past. Because that's going to be covered by the document depository.

MR. LIPSON: One hopes. We don't know what documents the Sacklers are going to contribute.

THE COURT: So that's not the relief you're seeking. Now, you also say here --

MR. LIPSON: -- the relief we're seeking --

THE COURT: -- if I can note --

MR. LIPSON: The relief we're seeking, Your Honor, is whether they exercised that power during these cases and shortly before in order to create conditions where --

THE COURT: I don't --

MR. LIPSON: -- they were --

THE COURT: I guess, what I don't understand is, why you would -- well, I really don't understand the notion as to the shortly before.

MR. LIPSON: Because that's apparently when the deal was negotiated.

THE COURT: But it's -- but that, you keep referring to the deal, right? And as far as I can tell, you define that about as broadly as one can, which is either, A, an agreement to settle with the Sacklers, or B, an absolute determination not to settle with the Sacklers. Right? That's your definition of the deal?

MR. LIPSON: No.

THE COURT: Because there was no deal until about half an hour before the final day before the disclosure statement hearing. That was when there was a deal.

MR. LIPSON: That's clearly inconsistent with the terms sheet that was filed at the outset of this case. There was an agreement in principle before the bankruptcy case --

THE COURT: But it --

MR. LIPSON: -- it had three --

THE COURT: But it wasn't a deal. Again, I --

MR. LIPSON: It was a deal that was subject to

change, of course, and it did change in some ways. No question. The Creditors Committee did an admirable job of increasing the Sacklers' contribution, which is a fine thing. The problem, Your Honor, is that all of that goes on inside the bubble of a protective order that makes it impossible for creditors outside of the case to understand what is going on and --

THE COURT: Then --

MR. LIPSON: -- whether there's an undue influence --

THE COURT: And you think -- of course, again, this is not what you have the examiner now, as you stated, investigate, but leaving that aside, if the examiner were to investigate the basis for an agreement, right, you believe that all of the information that would be provided to the examiner would be public?

MR. LIPSON: Provided to the examiner? No --

THE COURT: Yes.

MR. LIPSON: -- clearly not.

THE COURT: Yeah.

MR. LIPSON: But the examiner's report would be.

THE COURT: Right. And --

MR. LIPSON: That's the whole point, Your Honor. We understand why the parties --

THE COURT: Well, no, because your point is that

the protective order is shielding transparency. It's the same constraint that would be imposed on an examiner, as you well know.

MR. LIPSON: Not so, Your Honor.

THE COURT: So, have you ever tried a case, Mr. Lipson?

MR. LIPSON: I have tried --

THE COURT: Have you taken discovery before the case?

MR. LIPSON: I have, Your Honor.

THE COURT: And did you publish all of that discovery?

MR. LIPSON: No, of course, not.

THE COURT: No, of course, not. Right.

MR. LIPSON: And we're not asking for --

THE COURT: And what happens when you try a case, is that the judge gets the actual evidence that's derived from the discovery. It's usually in a case that would be of this size, quite voluminous. It generally takes up, you know, my entire bench and auxiliary trays, but that's not anywhere close to all the discovery, and when you actually conclude and conduct the trial, you learn pretty quickly, don't you, that it's only a miniscule amount of that evidence that actually is relevant.

MR. LIPSON: The fact that you're talking about --

THE COURT: So, when you're complaining about transparency, and when this is picked up by people who are not lawyers, I really wonder what on earth you're talking about.

MR. LIPSON: Your Honor, the -- I don't know what trial you are talking about.

THE COURT: I'm talking about the trials I conduct every day.

MR. LIPSON: We're talking about this case, not other cases, Your Honor.

THE COURT: And I guarantee you, if one were to try the issues in this case, there would not be 99 million pages of documents that would be in front of me on my bench.

MR. LIPSON: That may be fine, and it simply not relevant to the reason Congress created the examiner and --

THE COURT: No, but I'm just going to the point that you keep making, which is that there is some veil that's improper as far as the discovery that has been taken in this case, because it's been taken --

MR. LIPSON: Quite the opposite.

THE COURT: -- under protective order.

MR. LIPSON: Quite the opposite. We are not -- we clearly say we do not believe the protective order or the confidentiality stipulations are, in themselves, improper. We are saying that this is an unusual case, that involves an

unusual degree of public interest and concern, and we believe that an examiner should go into a bubble, if you will, created by that protective order, evaluate the work that we assume was done on this narrow question, emerge with a report saying, yes, it's okay, here's why. No, it's not okay, here's what you need to think about.

That's what we want and the thing to study, the thing to study is simply the question, did the Sackler families use their governance powers to unduly influence both the board, shortly before the bankruptcy, once the Sacklers decided to give the company up -- not a final deal, but they made the decision -- and then during the case when the Special Committee was appointed.

THE COURT: Okay.

MR. LIPSON: Your Honor, confirmation is coming soon. We understand that and we very, very narrowly tailored the timing of the examiner not to interfere with that. But when confirmation comes, the concerns that Mr. Jackson has that the 3,500 people who signed a petition on Change.org asking for an examiner in this case (indiscernible) they have -- they're not going to vanish. They're not going to go away.

There will be a public document repository of some sort, and people will go through that. This is the last best chance this Court has to quell those concerns, to show

that they are, in fact, unfounded. That's what we are asking you to do.

THE COURT: That's what you're asking me now to do. That's not what was in your pleading.

MR. LIPSON: Well, I apologize, if it was unclear, Your Honor. Doing the best I can.

THE COURT: All right.

MR. LIPSON: Would you like me to continue with my argument?

THE COURT: Sure.

MR. LIPSON: Or feel like you've exhausted --

THE COURT: No. I think we've exhausted the key question, which is, what is the relief you're seeking. Now, are you justified in getting it, is next.

MR. LIPSON: And I think -- correct. And the answer, I believe, is absolutely yes, Your Honor. We know that Congress said that Senator DeConcini said that the reason we have examiners is to assure the public of the integrity of the reorganization process in cases -- large cases of great public interest.

So, cases like Enron, cases like New Century, cases like Washington Mutual, cases like WorldCom have all involved allegations of serious wrongdoing and have all involved examiners who, in those cases, were doing much more than we're asking for here. In those cases, they were

actually figuring out who was the bad guy, but we're not asking for that.

All we're asking for is some assurance that the bad guy didn't decide to release (indiscernible). That's what we're asking for. Now, it may be the case that the judges in Enron and New Century and WorldCom, maybe they were wrong. Maybe there was no concern about the integrity of the process. Maybe Congress was wrong. And if, Your Honor, you think I'm wrong, you should simply deny the motion and we can move on.

I do not want to waste your time. I do not want to waste the time of the lawyers in this case who've already billed nearly half a billion dollars. We're not looking to run up anybody's bill. We're looking for some assurance about the integrity of the decision going forward. Exactly.

THE COURT: Okay. As far as the debt threshold of 1104(c)(2), what evidence are you relying on?

MR. LIPSON: Well, let's start with the Debtors' own disclosure statement. Right? At Page 131, they say -- not my words -- their words, that the Department of Justice has "an allowed unsubordinated, undisputed, noncontingent, liquidated, unsecured claim against Purdue Pharma in the amount of $2.8 billion, arising from the Department of Justice's civil investigation."

Now, we know that the Creditors Committee and I

believe the Debtors, it was still contingent, Your Honor, because they don't have to collect. They can rescind and do something else. Well, of course, Your Honor, but that proves too much. Creditors can always forbear. The fact that they can forbear from collection, the fact that they can forebear from enforcement, doesn't make a claim contingent.

THE COURT: Well, this wouldn't be forbearance. This is a right to rescind.

MR. LIPSON: The right to rescind, Your Honor, then says they have a choice. They can either pursue everybody or their claims balloon back up to their full amount. The full amount is not contingent or unliquidated.

THE COURT: I'm sorry, the full amount of their claim?

MR. LIPSON: The full -- I believe, their claim has two components, one of which is clearly stated, two claims at $2.8 million each, one of which is trebled. There is a portion that is contingent, but that's irrelevant. $2.8 million is clearly more than $5 million.

THE COURT: No, but it -- the order actually says, Paragraph 6, "The United States shall have an allowed unsubordinated, undisputed, noncontingent, liquidated, unsecured claim against PPLP in the amount of $2.8 billion arising from the DOJ's civil investigation provided that, if

the PPLP defaults on any material obligation, if a plan materially consistent with the terms of the civil settlement agreement is not confirmed, in the event of voluntary dismissal or conversion of the cases, or in the event the Debtors' obligations under the civil settlement agreement are voided for any reason, the United States my elect in its sole discretion to rescind the releases in the civil settlement agreement or to have -- or, to have an undisputed, noncontingent, liquidated, allowed unsecured claim against the Debtors for the full amount of that claim" -- of the proof of claim, not the allowed claim, but the proof of claim.

MR. LIPSON: Correct. I believe you just answered your question.

THE COURT: Right? So, and I think your reply that came in last night actually contemplates, not only not confirmation of the plan, but also the appointment of a Trustee and/or liquidation of the Debtors, right, so that's a contingency, isn't it? You refer to those in your reply, those possibilities.

MR. LIPSON: I'm not sure I understand why that's relevant.

THE COURT: Well, because, again --

MR. LIPSON: You planning to appoint a Trustee in this case?

THE COURT: No, the conversion --

MR. LIPSON: If you think a Trustee should be appointed --

THE COURT: The conversion of the case is a -- one of the outs in this proviso as well as a plan materially consistent with the terms of the civil settlement agreement not being confirmed. And we don't know whether that's going to happen, yet, right?

MR. LIPSON: There are always provisos in agreements, and creditors always have the right not to --

THE COURT: No, I -- isn't that a contingency?

MR. LIPSON: I don't believe it's a contingency that is relevant to this decision. And in any case, Your Honor, that is only one of two prongs. We know that --

THE COURT: I'm just --

MR. LIPSON: -- examiner shall be appointed --

THE COURT: I'm just asking, on this C2 point. I'm just focusing on the C2 point.

MR. LIPSON: I think that when the Debtor enters into a settlement agreement that becomes a (sound drops).

THE COURT: You froze. Sorry.

MR. LIPSON: Sorry, Your Honor, I didn't hear that.

THE COURT: You unfroze, just now. So, I think you froze right when you said, when I think -- you said, I

think when the Debtor enters into a settlement agreement.

MR. LIPSON: And obtains a final order that says the things you just read, that creates an allowed unsecured claim that is not contingent and is fixed.

THE COURT: Okay.

MR. LIPSON: For these purposes. I think the reality of this case, Your Honor, I think everybody knows, is that a plan will be confirmed, a Trustee will not be appointed, any of the contingencies that you identify are remote. In fact, the Debtors' own disclosure statement says, oh, the DOJ has said we're getting comfortable with all this stuff. We feel pretty good. So, Your Honor, in all due respect, I don't think that's the strong argument that they can make.

THE COURT: So, you're assuming the plan will be confirmed.

MR. LIPSON: I think it is highly likely. Yes, absolutely.

THE COURT: Okay.

MR. LIPSON: And as I said, Your Honor, we are not here to blow up that deal. We are not here to reinvent that wheel. We are here to try to make sure that we have some minimal level of confidence about the integrity of the process that has -- that leads to that final deal. We, obviously, understand that the agreement that was struck by

the Sacklers with the plaintiffs' attorneys in 2018 was not the final deal.

We realize that it created three pillars of a deal, and those pillars, fundamentally, have not changed. The amounts have changed. Other details have changed. The Creditors Committee has done incredible work in this case. The Debtors' counsel has done incredible work in this case to try to manage an extraordinarily difficult situation.

We are not attacking that, and I'm sorry if they are attacked. We are not attacking you, and we're sorry if you feel attacked. Outside the protective order bubble of this case, there are concerns that will not go away. You may disagree with those --

THE COURT: You don't think that that might be because --

MR. LIPSON: Inside the bubble --

THE COURT: -- of statements that you, yourself, have made in these pleadings?

MR. LIPSON: I'm sorry, Your Honor. You're saying that the past 15 years of --

THE COURT: No, no. I'm talking about statements you have made --

MR. LIPSON: -- the Sacklers being --

THE COURT: -- in these pleadings about the conduct of this case.

MR. LIPSON: Are you suggesting Mr. Jackson does not have the right to ask for an examiner, because --

THE COURT: No. I am, for example, referring to a statement on Page 23 of your motion where you state -- you clearly imply, quoting me from an opinion, a bench ruling I gave, in September 2020, where I, as part of the factual analysis, said, "It appears to me to have always been the case, and will continue to be the case, that a plan in which the Sackler families do make a material contribution that satisfies the Second Circuit's test in In re: Metromedia, is not only possible but the most likely outcome in this case."

Now, what you neglect to say, and I can understand why someone like Mr. Jackson or the people that read about this in the press might think from that, that that was just a preconceived view of mine, what you failed to state was, that was in the context of a hearing on the preliminary injunction. Now, we both know, the four prongs that need to be shown to get a preliminary injunction, right, which includes likelihood of success on the merits and irreparable harm or risk of serious harm and a balancing.

So, in a reorganization context, that includes a likelihood of a successful reorganization, which includes an analysis of whether the plan contemplated at that time could lead to a successful reorganization. So, this was not just

some sort of avuncular remark or preconceived notion of mine, right? You left that out. You left that as an implication. You didn't state that this was as a result of a hearing on notice with over a day's argument as to the facts.

MR. LIPSON: Your Honor, with all due respect, I don't think that that is the only time you have urged the parties to settle. I don't have the transcript at hand, but the December hearing, at which you approved the DOJ settlement, concludes with you saying something like, you must get this deal done.

THE COURT: I've said --

MR. LIPSON: You can do it; you should do it.

THE COURT: And you think it's improper for a Court --

MR. LIPSON: Absolutely not.

THE COURT: -- have the parties focus on a settlement option?

MR. LIPSON: Absolutely not.

THE COURT: All right, I think that's important for the record, because one can read this pleading as being to the contrary.

MR. LIPSON: Well, if that's --

THE COURT: Including the notion that there's a binary decision, which, I think, this pleading is premised

upon, that one either decides at the beginning of a case to settle and -- to the exclusion of everything else, or not to settle, to the exclusion of potential settlement.

Now, we both know that that's not the case, that that binary decision doesn't exist. One is always evaluating one as against the other, which is why I don't understand why one would be focusing on a period before the time that there actually was a decision to recommend confirmation of the plan that's currently before me. I think that's the main point that the Committee is making, which is, if you examine the whole process, you're going too far, because --

MR. LIPSON: Fair enough.

THE COURT: -- people don't settle until they settle.

MR. LIPSON: Fair enough.

THE COURT: Okay. All right. Okay, is there anything else?

MR. LIPSON: No, Your Honor, except -- no, except -- I believe that this case will result in a confirmed plan of reorganization and I'm not sure that's a bad result at all, and from inside the case, everything may look, and in fact be, fine. Contrary to your insinuations, I'm not the one creating concerns about the Sacklers. They have done it themselves by being secretive.

There are plenty of far better qualified people asking those questions than myself. Mr. Jackson, just like any creditor -- just like the single creditor brigade in (indiscernible) is entitled to some assurance about the integrity of the process. Congress said examiners are required in these cases, not because they're substitutes for litigation, not because they're substitutes for a deal, but because, in these cases, we need to know legitimately that people who are getting the benefit of the deal are entitled to it.

I might make one other point. I'm sorry. I said I was done. My -- you said settle or sue. Well, if you back and look at the cases, where examiners have been involved, there often have been suits against insiders, even in Insys, which is one of the other opioid cases, the Debtors have sued the insider there. We're not saying the Sacklers should've been sued.

THE COURT: My point is -- my point is a different one. Your motions focus on the negotiation of the settlement framework, which, throughout, was only a framework, subject to massive due diligence and further negotiation -- which, in fact, I think, has undisputedly occurred since then -- is the starting point for a review of, as you say, "the process."

To me, that is misguided, because it assumes,

because I think this is -- because it was only the starting point, that if one at least contemplates the prospect of a settlement, that is an irrevocable decision and one cannot turn to litigation. We both know that that's just absurd, and in fact, is belied by the facts of this case.

MR. LIPSON: What litigation --

THE COURT: One is always evaluating what is possible under a settlement and achievable versus what's possible and achievable in litigation.

MR. LIPSON: So maybe I'm not making my point --

THE COURT: To me, the decision that counts is the decision to actually enter into and be bound by a settlement.

MR. LIPSON: Right. And what we're saying is that outside of your protective order bubble, many people wonder why the estate hasn't sued the Sacklers. Well, they're not suing them because they're settling. Fine.

That may be the right thing to do, but given the concerns that have long existed about the Sacklers, we need to know more than what the Debtors have told us in the disclosure statement, which after 40 pages of a litany about the meetings that they've had and the discovery they've taken, and so on and so forth, throws up the hands and says, well, suing the Sacklers would be complicated. They may be judgment proof. This is the best deal they can get.

THE COURT: Really? That's your take on the disclosure statement and the Creditors Committee's letter?

MR. LIPSON: Yes.

THE COURT: In any event, that's not the relief that you're seeking --

MR. LIPSON: (indiscernible).

THE COURT: -- is to look behind that. You're not looking to look behind that, right? You're looking as to the issue of independence.

MR. LIPSON: Independence on the decision to grant the releases. That's correct.

THE COURT: Okay. All right. I understand that. that, frankly, could've been made without the -- I mean, I underlined about, I think, 50 times when you made these other allegations, so, that's fine.

MR. LIPSON: Thank you for your guidance, Your Honor.

THE COURT: Okay.

MR. HUEBNER: Your Honor, with respect to the parties responding, I think we have agreed on an order of operations, as we often do, in order to be efficient and not debate who should go next, so I actually think I'm leading off for the people who are objecting to the motion.

Good morning, Your Honor. May it please the Court. For the record, I am Marshall Huebner of Davis,

Polk, and Wardwell on behalf of the Debtors.

Your Honor, it is difficult to know where to begin in responding to this Kafkaesque view of both the fact and the law. It actually is quite important, because Professor Lipson's pleadings, I think, as your colloquies have tweaked out, the fundamental attacks on every party to this case and, in fact, themselves calling to question the integrity, not only of a great many people, but frankly, of the bankruptcy system itself.

I'm going to apologize in advance. I will try very hard, but I will -- I may end up slipping into a level of passion and a tone that in the case of one of the most difficult cases I've worked for two years, the Court has never heard from me, but candidly, as I think you will hear, I actually think that Professor Lipson's pleading, in many respects, is outside the bounds of acceptable advocacy to a Court of law.

Let me first begin with something on which I want to be very clear. The Debtors' opposition to this motion should not be perceived in any way, shape, or form to denigrate, minimize, or (indiscernible) the unspeakable and tragic (indiscernible) Mr. Jackson and his family, that fact, that loss, deniable and unfathomable.

That said, the terrible and tragic circumstances of the Jackson family cannot change the fact that the motion

contains no evidence whatsoever of the almost endless litany of nasty, utterly unsupported, and flatly (indiscernible) and unsupportable facts that Mr. Lipson blends into his papers to justify the relief requested.

And remarkably, in his reply brief, filed very late last night, he makes no attempt to fill the gaps. In fact, he doubles down. I was asked, recently, by someone why, why is Professor Lipson doing this at this stage in the case and why Professor Lipson in particular.

So, I'm going to hazard a guess why relief -- because it's not supported by a single one of the hundreds of thousands of creditors on the docket of this case, any of the 12 organized groups, many of whom, I think it is fair to say, hate, H-A-T-E, hate either or both of Purdue and the Sacklers and describe them with words like criminal, kill, evil, monster, in describing the opioid epidemic and joining the relief, because candidly, this is about Professor Lipson, in no small degree.

On November 10th, 2020, Professor Lipson gave the Friel-Scanlon lecture at Temple University entitled -- I guess, to generate interest -- "Sex, Drugs, and Bankruptcy: Due Process and Social Debt," in which he argued, in essence, the bankruptcy professional, and by extension, the Courts, that work all day every day on these cases, are basically corrupt, that they, in fact, do repeat deals with

one another, and that they sell out their own clients because of the art of the deal.

He specifically actually says that in this case, opioid victims were sold out because the professionals are repeat players and the art of the deal is more important than the epical, sacred obligation to address the dignity and human values and rights of their clients.

In particular, he goes on to say that Akin Gump, counsel to the UCC, and Milbank, counsel to Sacklers, are in a huge number of deals together and that, in essence (indiscernible) work stuff out as part of the art of the deal in the relational bankruptcy world. This ugly, dark vicious view of what we do for a living might explain Professor Lipson's otherwise mindboggling, unsupportable claim that the UCC, Akin Gump, represented UCC, that in the real world, on planet earth, has been battering and slamming and attacking the Sacklers almost every day for two years has somehow taken a dive.

I'm not going to let him walk back from what he said in his pleadings. They could have been a check on the process, but they didn't. Instead, they wrote the stipulation and gave up their rights and didn't do what they were supposed to do. We'll talk a little bit later about the ethical canons that govern the practice of law and who might have violated them in this case.

It also explains why, in the twisted maneuver that is also outside the bounds of acceptable advocacy, Professor Lipson, both in his opening brief and after his extraordinary (indiscernible) statement were pointed out in about a hundred pages of pleadings, totally, completely, and utterly erases the Ad Hoc Committee, the MSGE, the PEC and the MDL, and the mediators from his narrative, because, of course, the country's mass tort lawyers and 48 attorneys general are not "repeat players" in the bankruptcy system in his relational view of what may have happened here.

And so, because they don't fit his "relational theory" of Chapter 11, he closes his eyes again and again and again to the actual facts of this case, which I'll describe in a few minutes, clicks his heels together, and tries to enter a world of projected, made up reality.

Now, let's talk about the actual facts of this case and how this deal got actually cut. Because he actually commits a fatal and unforgivable error at the outset. The original deal was not cut by the board of directors or the Special Committee opposite the Sacklers. That he claims is the original sin that was both massive, (indiscernible) and irredeemable, never happened. It's a fabrication of his own that is absolutely described in the informational brief and in the disclosure statement and in multiple hearings before this Court.

Prior to petition date, it was the AG, attorneys general, the highest legal officers of their states, and the MDL PEC, comprised of most of the most terrifying tort lawyers in America who have filed thousands of lawsuits against Purdue and the Sacklers who were on one side, and Purdue and the Sacklers together were on the other side. That's who cut the framework here. It was not the board opposite the Sacklers.

The plaintiffs were suing Purdue and its owners, in thousands of lawsuits and, as opposed to letting those continue forever, until nothing was left and lawyers made billions of dollars, and the company was destroyed, after mediation ordered and personally overseen by the MDL judge in Cleveland, pre-filing, the original deal was cut.

I repeat, it was not cut opposite the Sacklers by the board or the Special Committee. And if he bothered to read the pleadings or call anyone and ask, it would've been brazenly, totally obvious. We cite, in our reply papers, exactly where those descriptions are to be found. The first day transcript is just as clear.

He also just makes up -- and I have no better phrase than the colloquial -- makes up what did and did not happen and what was and was not discussed in the mediation ordered by this Court under two of the most respected and august mediators every had worked in this country. He

actually had the temerity in a signed pleading to advise us all what happened and did not happen in a confidential mediation he knows nothing about and in which he did not participate, that it was not about the past, but only about the present and the future.

And I see he's frowning. I'm happy to get a pin cite and read his false claim from his initial motion if he doesn't remember it. In this approach of Professor Lipson, being utterly unburdened by the facts in the quest to vindicate this meta-theory about bankruptcy cases, was equally unburdened much earlier in 2019 when he wrote a letter copying the U.S. Trustee, the Wall Street Journal, this Court, the Debtors, and the UCC requesting an examiner.

I'd forgotten until 9:23 p.m. last night, when I read the final exhibit to his untimely declaration, hat he actually, literally looped the Wall Street Journal on an email to the Department of Justice and this Court, a letter that, just like his examiner motion, was fired off with no prior notice to any of the parties actually what he was trying describe, no attempt to reach out and verify basic facts, and utterly replete with flatly false factual claims, including what was and was not being undertaken by the Special Committee and other statutory fiduciary duties about which he knew nothing. But I guess copying The Wall Street Journal to try to get a story picked up maybe made it okay.

No lawyer I know would imagine copying the media on a letter to a federal court and the Department of justice.

At base, as I noted above, he repeats again and again his motion at Page 2, Paragraph 23 and the reply that notwithstanding the fact that multiple, highly-adversarial plaintiff constituencies, including multiple attorneys general negotiated this, the deal is somehow improper and needs further examination.

He goes on to then allege that the UCC, a statutory fiduciary -- oh, here it is, “Could have” but did not “act as a check on questions of independence”. It’s at Paragraph 49 of their initial motion if you want to check where he made that accusation.

And unless even the Court escaped unaccused of impropriety, he actually did that as well. On paragraph -- motion in Paragraph 55, he said the Court has already made up its mind and will approve the settlement and releases, “with little scrutiny”. So the debtors didn’t do their job, the UCC didn’t its job, the mediators didn’t do their job, attorneys general didn’t do their job, and the court didn’t do their job. Because, “people worry that (indiscernible) except for the noble Professor Lipson.”

Your Honor, we (indiscernible) at great length in our opening paper how Professor’s motion distorts terribly beyond the boundary of (indiscernible) advocacy, the actual

facts of the case, how it's filled with arguendo with no basis in fact. And I'm going to hit only a few highlights and then turn to the law.

So here's his first factual claim. And he's sure lucky he didn't put that he didn't put that in the declaration, because then we'd be talking about different legal provisions that govern submitting sworn statements to the court that turn out to be unsupportable.

"Important decision leading to the settlement agreement may have been made before the PPI Board or a special committee with independence of the Sackler families." Motion at Paragraph 23. On his telling all that follows, including the special committee's decision to accept the much-improved, totally different and totally advanced shareholder settlement was taken. But of course that's just not what happened.

As I said a few minutes ago, it was dozens of attorneys general and MDL PEC people representing thousands of governmental entities that negotiated the deal opposite the Sacklers. And it was those groups who are on the other side of the terms sheet that was filed on October 8th, 2019 at Docket Entry 257.

Twenty-three AGs and the PEC -- and by the way, just for the record, the PEC represents more than a thousand counties, multiple states and territories, municipalities,

Native American tribes, individuals, and third-party payors, a group that ultimately merged along with the AGs into the Ad Hoc Committee, who I think it's fair to say are no friends of the Sacklers or Purdue.

And, Your Honor, if you want to look at where all these facts were laid out, I'll give you the ping sites for that as well so there can be no possible question of the irresponsibility of the claims that were made. Pages 3 through 4 and 44 through 45 of the Debtor's informational brief, Docket 17, also went on to say the settlement agreement came about as a result of (indiscernible) critical mass of plaintiffs, including many AGs and the PEC. The Disclosure Statement, Docket Number 2983, would have the same, among many other places, on Pages 3 to 4 and 70 to 71.

Despite objecting to the disclosure statement, interestingly enough, Professor Lipson did not object to this part of the disclosure statement. Nowhere in that objection where he could have said you need to explain more about how the initial deal was cut truly, honestly, and well and by whom. He didn't do that. So if he thought that needed more disclosure, maybe he should have done what a regular lawyer would do, which is either call us up and say, you know, I think there are some questions here, I wanted it quite clear enough, or he could have objected if he didn't get accommodation from us, as we accommodated so many other

people.

Moreover, Your Honor, while his examiner motion was actually quite vicious and really nasty in attacking members of the Special Committee -- we mentioned before you, you have Steve Miller dropping, exhausted as he tried to save Delphi, working for a dollar to save a historic American company. And in fact, the disclosure statement had pages and pages about the formation and independence of the Special Committee. See AG, Pages 60 to 66. Did Professor Lipson object to that part of the disclosure statement and say I need more here, I want to know more about how to (indiscernible) who they were? No, he didn't. He waited until after the hearing was basically over to drop another totally unexpected, never called, never discussed, you know, thing on the docket that the rest of us have to deal with.

So I think that everybody on the planet other than Professor Lipson seems to know this, but let me say it one last time. The original deal was not negotiated between the Sacklers and the Board of Purdue, nor between the Sacklers and the Special Committee. It was negotiated in and grew out of the MDL mediation ordered and organized by Judge Polster with many state AGs and the MDL PEC on one side and the Sacklers and Purdue, because we were not in Chapter 11, on the other side.

Indeed, Your Honor, another little point of

bankruptcy law, the Debtors did not even own the fraudulent transfer claims in August of 2019 because they had not yet gone into Chapter 11. They were not the Plaintiff. 548 didn't exist yet, creating a federal action for fraudulent transfer owned by the estate, because there was no Chapter 11 proceeding. And of course 544 didn't exist yet. So none of the claims that are actually being pursued by state attorneys general and the MDL PEC on fraudulent transfer theory could possibly have been settled by Purdue because they were not Purdue's claims. They were the claims of the plaintiffs who did settle.

Second, Professor Lipson goes on to state again and again with no foundation and directly contrary to every fiber of the record that the shareholder settlement was "foreordained" and "irreversible", see (indiscernible) motion at Paragraph (indiscernible). It is a thread that again he doubles down on last night, Page 5 of the reply. "While the plan may reflect important developments --" thanks for the shoutout, "-- since the settlement framework was announced, the initial decision to settle appears to have been the first link to a chain of decisions, including the preliminary injunction mediations (indiscernible) the plan."

This fact that it was irreversible is totally, outrageously false and ridiculous. The record in this case,

of which lawyers are obligated to take notice and be familiar before filing pleadings as officers of the court, are that the settlement framework was simply the launching off point of further negotiations, and many, many parties were not on board, and many parties didn't even exist. So it could not possibly have been foreordained. The UCC wasn't even formed until weeks and weeks after the framework was first agreed to. And we said this to the world again and again, but I guess not everybody felt that we needed to check it out.

In the first three pages of the Debtor's Informational Brief, the first document filed that sets the stage and explains the case, we said there were, "many open points" that had to be resolved before any settlement could be reached. The Disclosure Statement, on Page 4, more language no one took exception to because it is unquestionably, utterly, totally, and profoundly true, on Page 4 says, and I quote, "The settlement framework, however, was far from a final settlement. Indeed, the debtors made clear on multiple occasions that the settlement framework left many items to be negotiated and resolved."

As the Court may or may not recall, I stood on the podium, the actual podium, in November of '19 at the outset of the cases and emphasized that A critical precondition to any final resolution with the Debtor's shareholders was,

"massive amounts of diligence, structuring and negotiation", November 19th, 2019 transcript at 70, Line 8 to 72, Line 3.

Although Professor Lipson prefers to either rewrite or invent history. This is exactly what happened for 22 months as hundreds of people working around the clock every single week of their lives. Not one, but two estate fiduciaries with duties under federal law completed comprehensive and independent investigations into claims against the Sacklers, not to mention the Department of Justice of the United States of America and the Attorneys General of almost every state in the union and representatives of tens of thousands of municipalities and other representatives of hundreds of thousands of claimants representing the 11 committees that we have in this case.

Let's talk just for a minute about the special committee. Let's actually just for a minute close our eyes and pretend that they cut the initial deal and that therefore this original sin theory actually we should spend a moment on its arguendo.

The Debtor's Special Committee, whose precursor was formed in May 2019, conducted an investigation for over 22 months that involved an exhaustive review of allegations against the Sacklers, the identification of legal claims, reviewed hundreds of thousands of documents, the commission of forensic analysis, and the publication of all transfers

to the Sacklers families, totaling over $11 billion, on the docket for the whole world to see.

Despite all of this and the description of their independence in the disclosure statement, Professor Lipson's pleading goes on to great lengths to challenge it without any evidence that, independent from the Sacklers, nothing but essentially snide (indiscernible) arguendo.

First of all, charters of New York companies are publicly available. So why don't you stop telling people you couldn't see the charter? All you do is you go on the certificate -- on the secretary of state's website and you pull up the certificate of incorporation and you can see it. And you can shake your head. It's just going to be emarassing when you call later and say you're right. I don't think it is at all untrue.

The charter of Purdue Pharma Inc., which is where the (indiscernible) and the special committee said the certificate of incorporation is a public document available on the website of the New York State Secretary of State.

Second, Professor Lipson showed fundamentally understanding -- misdescribes how discovery works in every case ever brought in this country (indiscernible), and it's shocking. Here's how it actually works, for the benefit of everybody.

People seek discovery. All the parties to a

litigation sign a protective order. Your Honor, you stole my thunder. If you get discovery from a counterparty, are you allowed to publish all the documents in the newspaper? Of course you're not. That's ridiculous. You are allowed to use them at trial, or at a hearing, or to negotiate, or to threaten. And you're allowed to use them publicly when the time is right unless the other side says, wait a minute, I have a statutorily legitimate basis to seal a subset of the documents that you want to use in discovery. And then there is a burden on the producing party to keep the documents confidential.

Professor Lipson could have signed the protective order, as so many other parties could have at any time and basically seen everything. And then if you wanted to litigate -- and we'll talk about that in a few minutes -- like every other party in the case, he is absolutely within his rights to use every document, a hundred million pages, probably the most in the history of the world, he is entitled to use all those documents in litigation, to object to confirmation, to object to the disclosure statement, to say that the deal was somehow born in sin. Right? And if we thought that something shouldn't be made public of the producing party, we say wait a second, we think this satisfies (indiscernible), and you have a discussion about it. That's how it works. There's no secrecy, there's no

shield from the public. There's no such thing in the world as the entire public world seeing on a website documents produced by parties in discovery. Just like prior to the bankruptcy case when there are 2,700 lawsuits by almost every government in the country against Purdue and the Sacklers, those documents weren't public, either. Because that's not how litigation works, ever. Ever, in any court in this country. It's the United States legal system that you produce documents and then when it's time to use them, you can use them in a public forum unless there is a unique justification for sealing.

Now let's talk for a minute about his next ridiculous disclosure that because independent directors were not insulated from removal formally until November 19th, somehow they were captured or jaded or something until then.

Let me be very clear. I've been doing what I do for a pretty long time and I've seen hundreds of situations where companies needed an independent committee of the board or a special committee of the board to investigate or analyze a transaction or a potential litigation or a potential merger where for a complex reason or other the full board might not be disinterested, or it might just be the better approach. And so companies all the time -- I don't even know what he meant (indiscernible) when he said

this is a special committee and not an independent committee. I don't know what that means, but every one of these directors unquestionably satisfies the independent (indiscernible) in any stock exchange world, which is where they lie.

But here's the answer. I have never in my entire career seen any company do what we did, which is actually formally block the shareholders from touching, removing, or adding to the members of a special committee. You can read about all the horrible cases out there with the sex scandals and CEO impropriety and fighting with department executives over pay. You will not find one case where the members of the special committee were barred from being (indiscernible) by a shareholder or (indiscernible) because we were so concerned with being so cleaner than the driven snow and having our process be so utterly above any reproach that we did things nobody even heard of before, like executing a proxy.

And, by the way, as this Court knows perfectly well, and probably most of the practitioners because we do this every day know well also had the Sacklers tried to touch a member of the special committee or remove them from office, we would have been before Your Honor in about a New York minute. And the Second Circuit law is quite clear that attempts by shareholders to interfere with a Chapter 11

process and interfere with the fiduciary duties of a Chapter 11 sworn fiduciary trustee will never be tolerated. This was belt and suspenders that I believe has truly never been done before, which (indiscernible) criticism that nobody else even has ever thought of before.

Every (indiscernible) private equity case where ethe private equity firm is out of the money and their directors all sit on the board, I dare you to show me cases where the firms actually created a proxy that they can never touch or remove or change the board members for the length of the case. Never happens.

Now let's talk about (indiscernible). There's law, it's called Iridium. It's the governing Second Circuit Case about one of the ways (indiscernible) the court's approved settlements. And guess what one of the very first (indiscernible) factors is? Was the settlement the product of arm's length bargaining? It's a totally fair question. That's kind of the only thing maybe that Professor Lipson and I agree on. The world deserves to know and to be comfortable, a hundred percent comfortable, including because of the pre-2018 and pre-2019 domination of the company by its owners, which in a privately-held solvent company is not unusual at all. In fact, every privately-held solvent company is normally controlled directly by its owners. The question is did it change, did it change soon

enough, and was the process by which these settlements were reached appropriate?

So how do you do that? Well, let me for example give you an explanation of how the non-consenting groups (indiscernible) fair to say that even professionals would agree that the non-consenting states group is quite adverse to the Debtors. I think they're quite adverse to many things in this case, and they have respectfully and strongly and (indiscernible) on many issues.

(indiscernible) Professor Lipson, who was trying to evade this Court's order and the confirmation procedures that were entered by this Court a few weeks ago to no objection. The NCSG is testing and (indiscernible) to litigate if we can't cut a deal, the arm's length nature of Iridium, it is our burden to prove at confirmation (indiscernible) discovery. Because that's what lawyers do when they want to impose a (indiscernible). And in fact, the NCSG has sought broad discovery of these points, including a wide array of communication between each of the four special committee members. All for of them, and the Sacklers. Because they may be asking or seeking confirmation of a similar question, but they're trying to get an answer the right way, without making up facts and basically accusing everybody in the court of misconduct.

But instead of doing that, which is what he should

be doing, signing the protective order, paying a small fee to the secretary of state, (indiscernible) corporation, asking questions and seeking discovery, Professor Lipson (indiscernible) people are concerned, we need an examination, a lot of stuff here happened that doesn't feel right.

Now let's talk about the UCC (indiscernible). I already read to the Court Professor Lipson's view (indiscernible) for the Sacklers, just outrageous. So I want to remind Professor Lipson that the UCC is a statutory fiduciary appointed by the Department of Justice of the United States of America whose members include multiple passionate victims' advocates who have suffered losses no less unfathomable, egregious, and horrible (indiscernible). That committee conducted its own massive, separate, and entirely independent investigation for more than a year-and-a-half, and it cost them tens of millions of dollars that was appropriately spent but (indiscernible). The record is quite clear, as this Court lived every month for almost two years, that the UCC was incredibly adversarial to the Sacklers. They pursued discovery from the debtors, from the Sacklers and the like.

And by the way, on the relational theory, they weren't much more kind to the Sackler's lawyers. They actually sought to invade the privilege in an extraordinary

motion alleging the crime-fraud exception that the Sackler's lawyers may have helped them commit crimes and that therefore the Sackler's (indiscernible) attorney-client privilege deserved to be invaded.

And, by the way, as an aside, to this day, I still can't pronounce Mr. Uzzi's name correctly, so I don't know if there's much coziness over there.

So what's the evidence -- what's the evidence that Professor Lipson has of undue holiness -- unholiness and birthed in sin? No. He ignores the fact that the Debtors were involved in a discovery program that was unprecedented, with 90 million pages of materials that he could have gotten access to with one flick of a pen. Millions of additional pages of financial and other materials from the Sackler families, including from banks and institutions all over the world. And he ignores all of this.

He cites the UCC letter and says, you know, there were things helpful, but it doesn't contain the analysis of what they found. I guess he just didn't read all the way to the end. Because the UCC explained extremely clearly at Page 23 why it would have been helpful to the Sacklers and totally inappropriate for them -- and by the way for us as well -- to explain in great detail why we did what we did and our strengths and weaknesses.

And I quote so the record is clear and Professor

Lipton can take comfort, and those of us who have worked about 16 hours on this case every day for years actually care deeply in doing our jobs -- and I quote, “This letter is not the appropriate forum to address each of these issues regarding estate and third-party claims. This is particularly true by the structure of the Sackler’s settlement, which provides that in the event the Sacklers breach their payment obligations, the Master Distribution Trust will be responsible for making all payments to other creditor trusts for subsequent distribution, will take ownership of and have the ability to pursue the creditor’s (indiscernible) all estate (indiscernible) causes of action against the Sacklers and related parties. And further, that accounts (indiscernible) all public and private claimants will be free to recommence or commence their direct causes of action. As such, it would be inappropriate for this debtor to provide the UCC’s views on these issues. It’s because we are adverse to the Sacklers, very adverse, that we’re not doing this, not because we are somehow (indiscernible).

He also explains, as I described before, that the protective order keeps suggesting that it casts an inappropriate shield to keep documents from public view. Your Honor, I have a long quote from you where you actually explained this to parties way back in January. I’m not

going to bother rereading it. I think the rest of us understand quite well how discovery works in every case.

Finally on this point, the motion and the reply totally, utterly, and completely, which is outrageous, ignores the multi-month phase two mediation overseen by former federal district judge Layn Phillips and Ken Feinberg, who are indisputably two of the most highly-regarded, experienced mediators in the country. Contrary to the movant's utterly false and unsupportable claim that the mediation focused on a "present and future" motion (indiscernible) mediation, of which he could not know, I don't really know where he decided (indiscernible), was in fact focused on the past. Its principal purpose was to address the strengths, weaknesses, and recoverability on the claims that the debtors and the creditors have against the Sacklers arising from their past conduct to what the right settlement is to address those past claims.

He again ignores totally that it was not the debtors and the special committee that ultimately reached agreement with the Sacklers after 11 months of mediation, it was the ad hoc committee with 23 attorneys general, dozens of other state actors, and the MDL PEC. The UCC, who I already described several times, the MSGE, and the four independent (indiscernible) who negotiated opposite, against, and reached a deal with the Sacklers. Every one of

those three other parties made that point strongly, clearly, unambiguously in their objection. The response is zero. He doesn't even bother in his reply brief to acknowledge that he got the facts wrong. The deal was not cut by the special committee, the deal was cut utterly independently by four antagonistic, motivated -- I think actually all of them were fiduciaries, because two were pretty much all governmental entities and the other two were Chapter 11 fiduciaries.

He also totally fails to acknowledge that the $4.275 billion number that he says were birthed in sin was the mediator's number. It wasn't the debtor's number, it wasn't the special committee's number, it wasn't the UCC's number, it wasn't the AHC's number, it wasn't the (indiscernible) number, it was a joint proposal of two mediators who spent almost a year on this case listening to hundreds and hundreds of hours of presentation about the Sackler's risk and liability and culpability and wealth and everything who then said this is what we think is the right number. Maybe they are corrupt (indiscernible).

Now let's talk about the law. Because he's pretty much as strong on the law as he is on the facts. So, Your Honor, I'm going to skip the whole pot on what relief he actually asks for because I think we finally got that clarified. There's a whole lot of points where the relief he wants is radically different in different places,

including in Paragraph 17 of his reply, where he appears to radically broaden the requested relief even over what was originally sought in the extraordinary motion.

So now let's just go to the law. Let's start with 1104(c)(1), the interests of creditors. So 1104(c)(1) says that you should appoint an examiner if it's in the interest of creditors. Well, given that there are 614,000 creditors in this case and there are 12 organized committees of creditors and the fact that not a single other party on the planet, including people who have been passionately adverse to us nonstop for years have joined or supported the relief I think pretty much tells you everything you need to know about what everyone else in the entire case genuinely, truly, and caringly believe is in the interest of creditors.

Moreover, Your Honor, the UCC (indiscernible), they have the express support (indiscernible) to Professor Lipson's motion of virtually every organized creditor group in this case on the private side. And of course the AHC speaks for the people (indiscernible) speaks on the public side and the MSGE basically speaks for the balance.

Second, as we already discussed, it's only his gross misunderstanding of how the original deal was cut that we could have justified this motion whatsoever. And it is false and it is unsupported.

Third, he concedes in Paragraph 77 of his original

motion that (indiscernible) duplicate work done by, dot, dot, dot, key participants in these cases. That actually was one of the factors for denying (indiscernible) when it duplicates work already done.

He then claims, again, that the examiner could deal with the nearly hundred-million page record in this case, wouldn't need his own discovery, could minimize undue delay and duplication. But that's of course not right, because the nature of the wild accusations (indiscernible) by Professor Lipson and (indiscernible) examiner or anyone of quality would finally, you know, be there through Professor Lipson's world view, finally let the world know whether this all happened properly or not is not doing it in a week or two or four or six. I wouldn't agree to take the job. I don't think anybody (indiscernible) would take the job unless they were given a massive period of time and a massive budget. Because if that's the imprimatur, to use his word, that the world hasn't gotten yet, which he agreed was totally false, that obviously would require anybody (indiscernible) with extraordinary effort.

Third, the costs of an examiner, including the delay alone, would be terrible and massive. So many parties have worked day and night to maintain the current schedule and avoid a delay in confirmation to get the board (indiscernible) the issue out to help (indiscernible) to

stop the fee burn, to tell the lawyers to go home and to start savings lives. Delay alone, even a month's delay, is millions and millions of dollars, and maybe more than that.

His only answer to the concern that a lot of good, caring fiduciary people have for this is, oh, don't worry -- this is in Paragraph 43 of his reply -- it will -- it can conclude, "ten days before the commencement of the confirmation hearing". This is just poppycock.

First of all, ten days before the confirmation hearing is a tiny number of weeks. Second of all, he cleverly doesn't say when that confirmation hearing would be. For sure if we adjourn the confirmation hearing a month or two or three or five, maybe it could be done ten days before. If it's going to happen in August, we'll have used tens of millions of dollars. For someone who has actually lived (indiscernible) cases Professor Lipson talks about, we lost those examiners, I don't think so.

Now let's talk about (indiscernible) and the debt threshold question. Once again -- and this just really was highlighted by the colloquy of the Court -- I just found it mystifying that when this Court actually read him the provisions of the DOJ settlement, he insisted on trying to maintain that this was a fixed debt. So let me educate here as well.

This is not like any claim settlement. Claim

settlements do not give counterparties the right to the sin. They do not contain multiple contingencies. They do not allow creditors to produce alternative remedies of either springing to a much higher dollar amount or rescinding and suing and doing other things if multiple conditions are not satisfied. They never (indiscernible). A typical claim settlement (indiscernible) is very straightforward. If any (indiscernible) you will have an allowed unsecured or secured claim of X dollars, period. You have a claim ticket, you have an anticipated distribution, whatever the allow.

This claim looks nothing like that. Because the DOJ settled early in the case -- or earlier in the case, it wasn't actually that early -- when the contours of a plan and its ultimate distribution could not be known. And even if they didn't have a recission right, which Your Honor called him on correctly which he misdescribed in his pleadings, they only said, no, they just sprang to a different amount. Wrong. (indiscernible). But even once again if I just pretend that his facts are (indiscernible) and they merely (indiscernible) to choose between one of two (indiscernible), it's still not fixed. The statute says fixed, liquidated, and unsecured. And so if it's one of two amounts depending on multiple contingencies -- and by the say, it's the only claim in the entire (indiscernible) that

is even arguably, potentially, hypothetically maybe fixed (indiscernible) the only one (indiscernible). It's just not. Because if I either owe you $5 or $20. We have not fixed the amount that is owed. It is subject to contingency and therefore to fluctuation.

But again, that's the deal that we didn't cut. The deal that we did cut gives them a recission right based on multiple contingences. And there's no universe in which that extremely atypical claim settlement represents a fixed amount.

I'm going to skip citing the legislative history about fixed amount. There's a lot about balance sheets and (indiscernible) debt (indiscernible) whole section was about (indiscernible) were not unduly heard and the fact that many of the cases that actually say (indiscernible) no exceptions, say it in the public company context because they are there to protect shareholders. I assume that Professor Lipson and I also agree that the last thing either one of us wants to (indiscernible) is protecting Purdue shareholders.

Then, Your Honor, let's talk about the assumption. Because I'm willing to keep giving him the benefit of the doubt again and again and again because he still (indiscernible). And now let's just pretend for a minute that the DOJ (indiscernible). We filed a one-page agreement

with them that says you have a fixed, allowed, unsecured claim of two-point-x billion dollars, period, end of story. Right? Is it actually mandatory? I think the answer is no.

So let's explain. First of all, the legislative history he doesn't tell you about is that it says that it shall permit (indiscernible) to a (indiscernible) examiner (indiscernible) where the court believes that it's appropriate. Permit and where appropriate certainly don't sound like the language of mandatory. It doesn't say the require. It actually says permit.

Second of all, if you look at Paragraph 62 of his motion, you might not be surprised to see that almost every one of these cases is from the 1980s and 1990s, which ended a very long time ago. Because what's actually happened in the last twenty-something years is that court after court has held that the as-is-appropriate language in 1104(c) in fact gives the courts discretion to refuse to appoint an examiner when it is inappropriate.

And this Court -- this Court (indiscernible) originally (indiscernible) examiner. We actually think, Your Honor, that you got it right back then, and you were probably ahead of the opponent. Because what's happened since then is that a great many courts have adopted a similar approach. And I would note, by the way, that the (indiscernible) actually might well also rule

(indiscernible) right now, even Judge Patterson. Because he said, you know, I didn't see enough in there on waiver and laches. He did not actually rule out the possibility of (indiscernible) and he actually (indiscernible) on the public company context. So what's happened in the last 20 years which we don't (indiscernible) with Professor Lipson's recitation of the law.

In re Dewey & LeBeouf, 478 B.R. 627, 639, Judge Glenn declined to appoint an examiner notwithstanding the clear meeting of the debt threshold because, among other things, and I quote, "An appropriate and sufficient investigation has already been conducted supporting approval of the settlement". Judge Glenn ultimately concluded that the motion was, "filed for improper purpose".

In Spansion, a 2012 Delaware case, 426 B.R. 114 at 127, Judge Carey declined to appoint an examiner, even though the debt threshold had unquestionably been met, because, quote -- and this is going to sound pretty familiar -- "Creditors' committees and various ad hoc committees vigorously represented unsecured creditors... and all parties had ample opportunity to conduct and have conducted extensive discovery to investigate the debtors". They didn't spend over a hundred million dollars because they (indiscernible), and that was good enough. Judge Carey found, and I quote, "No sound purpose in appointing an

examiner only to significantly limit the examiner's role when there exists insufficient basis for an investigation", 426 B.R. 114 at 127.

Then there's Innkeepers, where Judge Chapman held that, "A number of course have entirely declined to find it in (indiscernible) is mandatory" and found that, "because the request for the appointment of examiner has increasingly been used as a litigation tactic by parties unhappy with the status or conduct of a case... Courts have quite understandably and properly, I believe, pushed back and declined to appoint an examiner to join in otherwise (indiscernible) in which the many combatants are well-armed and highly motivated". If this is not a case with an unprecedented number of well-armed and highly-motivated combatants, including almost every government in our country, I don't know what case is.

And, Your Honor, Judge Glenn summed it up in ResCap. The appointment of -- this is a quote also. And I'll always quote, I won't paraphrase. We don't make up. "The appointment of an examiner would be inappropriate if the motion was filed with improper (indiscernible) such as a litigation (indiscernible) or if there was no factual basis to conclude that an investigation needs to be conducted or if an appropriate and thorough investigation has already been conducted or is nearly complete by a debtor's committee

or a governmental entity." ResCap, 474 B.R. 112 (indiscernible). We hit every possible alternative within every possible alternative laid out by Judge Glenn in the ResCap decision.

Professor Lipson addresses not one of these cases in his reply, not one. He talks only about (indiscernible), which, frankly, I could have spent five minutes. I walked you through why he was totally wrong even on the one case he tried to fend off. But I'll just give him that (indiscernible) and let's just say that every other case that he failed to deal with is insanely (indiscernible).

This is not a case -- and I actually want to be generous to Professor Lipson for a minute. This is not I think a fact pattern of the type of improper purpose that courts are normally concerned about where parties (indiscernible) and is unhappy with how the whole case is going and maybe trying to sort of, you know, flip the apple cart (indiscernible). I understand that he is an academic who has a view of the bankruptcy and the Bankruptcy Code and that he actually believes that this case is an example of the way things should not go. The problem is none of the rest of us who have lived it every day (indiscernible) and the number of people who have acted improperly and (indiscernible) for an examination to be warranted here is (indiscernible) and it really is on some level not the type

of litigation tactic (indiscernible) I certainly acknowledge that Professor Lipson Mr. Jackson were not the typical litigants. The reality is it's kind of a litigation tactic. Because as I said before, there are procedures ordered by this court for (indiscernible) like challenge the arm's length nature of the negotiations. It is one of the prongs we have to satisfy (indiscernible).

And I talked before about the fact that someone else who is very adverse to us in this case, the NCSG, is beginning from the same question, but they are doing it properly, not attempting (indiscernible) that all parties agreed to and after extensive negotiation no party (indiscernible) Professor Lipson, objected to. But Professor Lipson and Mr. Jackson believe that the shareholder settlement and the special committee did not do things (indiscernible) to think they should litigate it at confirmation. What they can't do is try to force the examiner none of us (indiscernible) to do it (indiscernible).

Finally, I need to quickly address (indiscernible) which Professor Lipson perplexingly rests a great deal of his argument (indiscernible). But let's just say that (indiscernible) actually did. In Cenevo, this Court acknowledge that there were, "clearly cases" under 1104(c)(2) (indiscernible) discussion to refuse to appoint

an examiner where the motion, “happens towards the end of the case” check, would be a total waste of time, check, (indiscernible). Again, not intended in the way our litigants might. I absolutely understand that. But nonetheless similar outcome.

March 6th hearing, transcript at 86 (indiscernible) to 87, Line 19. Well, actually (indiscernible), which we are totally comfortable with. Because I don’t think this Court makes too many mistakes that I know of, is that they filed with the (indiscernible) motion ten days after the petition date, not 19 months after the petition date, where all parties agreed there will be some formal investigation by someone was required. It’s the exact, exact, exact other end of the spectrum from this case.

Then finally, Your Honor, is the concept of waiver or laches. Professor Lipson, in his reply, seems to allege that laches only applies sort of within the statute of limitations and it has no applicability as long as the proposal was made (indiscernible) before the (indiscernible). It’s just not what the cases say. It’s interesting, but you can’t make up the law. You need to actually read the cases and accurately represent what they say. We have the cases on Page 26 of our breach. And (indiscernible) irrespective of the mandatory nature of

1104, a party in interest can be deemed and often is deemed to waive its rights to seek an examiner and a delay even if the predicates of 1104(c)(2) were satisfied. Other than that (indiscernible) he doesn't even touch the caselaw.

In (indiscernible), Hearing Transcript 72 filed December 2019, the Court held, quote -- I'm sorry, the movant, "Waived its right to request an examiner by waiving...almost two years after the petition date...and less than two months before the confirmation hearing." It's like (indiscernible) that case (indiscernible) the motion be excused.

Professor Lipson has been very intellectually interested in (indiscernible) since the beginning. And I don't blame him. They're actually difficult, challenging, complex cases that raise tremendous issues of social policy in the bankruptcy system. But that involvement and focus actually proves fatal under the governing cases.

In November 2019, Professor Lipson himself, at the time with no client, essentially writing as an (indiscernible) academic who believed that (indiscernible) to the U.S. Trustee and other parties (indiscernible) requesting an examiner. And that request obviously did not bear proof because the U.S. Trustee and the Department of Justice for the United States of America decided not to accept his invitation and seek an examiner.

For 19 months he did nothing to follow up or to try to press forward (indiscernible) examiner (indiscernible). Obviously he lectured and he spoke, but that's not what I mean. I mean appearing in a court of law seeking relief from (indiscernible).

In July of 2020, his now-client submitted a (indiscernible) requesting an examiner. As we have been with many individual and pro se plaintiffs, I think consistently every time, this Court was responsive and gracious in issuing invitation to treat the letter as a motion. Mr. Jackson, for reasons that may well be utterly (indiscernible) and completely understandable, chose not to do that. Perhaps recognizing this -- and this is another just astonishing (indiscernible), and I think he really does not realize how unkind/vicious his (indiscernible) can be. He tries to blame the Court for not (indiscernible). He basically says the Court warned counsel to stop sending these letters and warning counsel (indiscernible), reply at Paragraph 39. This is unbelievable. He's basically saying this Court tried to bully me (indiscernible) the examiner. It's outrageous. The courts are not supposed to be copied on the letters that people sent to the DOJ or journalists. It's unthinkable. I know no one would do that. There are courts that say, and I think (indiscernible) declaration is about seven words long, please stop copying me on these

emails. Like, who copies a court on emails like this? Hello? And read the transcript. I think a lot of what you're thinking about and asking about has already been put on the record (indiscernible). To suggest now that the court bullied him in some way out of (indiscernible) and that's excusable neglect is just unbelievable.

Then he claims next, and I quote -- I'm sorry, let me (indiscernible), is the (indiscernible) should be deemed excusable by, "hope that the debtor's (indiscernible) statement would provide some answers to the (indiscernible)," Paragraph 31 of the reply.

Well, Your Honor, I've already (indiscernible) someone. We think the disclosure statement advances everything that it needs to. Obviously every other party in the case does as well since we resolved every single objection, and the Court does as well. If Professor Lipson (indiscernible) needed to provide more on these topics, he should have called us like everyone else did and said, hey, I think you need more (indiscernible) or you know what, I really care, as an academic who cares about the integrity of the bankruptcy system. And I think if you don't put in more stuff on the following three topics, questions will remain. And you know what we would have done? We would have (indiscernible). Because we added dozens and dozens of pages to the disclosure statement basically requested by

anybody. Because Davis Polk has a very specific approach, which is more (indiscernible) is great in the disclosure statement. Almost anything anybody else put in to say, well, what about this, what about that, we try to accommodate. But it just didn't happen. Instead, we got ambushed with an examiner motion, but we have no idea what's coming based on facts they've made up.

So with this, let me close. It is only when you make up facts and ignore the actual facts that are clear on the record of the case and many documents filed in the case that motion papers like this could even be signed. Facts that he makes up like, one, the initial deal was cut between the Sacklers and the Special Committee, and that needs to be investigated. False. Two, there was no MDL mediation (indiscernible). False. But the AGs and the PEC are not actually (indiscernible) opposite the Sacklers in the initial framework. False. The original framework inexorably foreordained, and I quoted it (indiscernible) to you, the final settlement reached almost two years later by totally different parties, two of whom did not exist when the deal was originally cut. False. That the UCC took a (indiscernible) for the Sacklers and didn't do its job, and I quoted his words, and I'm not going to let him (indiscernible) like so many other of these factual assertions in the pleading, totally false, slanderous, and

outrageous (indiscernible) to the victims on the UCC who have done this as a volunteer for two years.

Next, for the almost year-long second mediation before Judge Phillips and Ken Feinberg were, quote, “Not about the past”. False. 4275 may not be okay (indiscernible) Ken Feinberg. False.

Perhaps Professor Lipson either lost sight of or is not aware of the fact that Rule 9011(b)(3)details representations to the court, provides for the following. By presenting to the court, whether by signing, filing, submitting, or later advocating a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief formed after an inquiry reasonable under the circumstances. Three, the allegations and other factual contentions have evidentiary support or are specifically so identified are unlikely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

This case has over 600,000 creditors. It is with very good reason not a single one of them, so many of whom have suffered unthinkable, devastating losses, support this motion where virtually every single organized group opposes it. Professor Lipson, with very good reason, stands utterly, completely alone. Because the estate is actually

paying the fees of the UCC, the MSGE, and the AHC, Professor Lipson has already diverted hundreds of thousands of dollars and probably more from lifesaving, critically-needed abatement to totally waste in legal fees.

His latest misguided, ill-informed, and inappropriate foray runs the risk of delaying and diverting millions of dollars and more with terrible, unthinkable (indiscernible) costs to opioid victims and, ironically, to the human and dignity value he purported to champion in his (indiscernible) lecture that the rest of us are desperately trying to uphold and validate.

For these reasons, Your Honor, we ask that this motion be denied.

THE COURT: Okay. Mr. Lipson, I'll give you a chance to reply, but why don't I hear from the other objectors first. And I have reviewed all the objections, so you should assume that.

MR. LIPSON: I would like to reply when I can, Your Honor.

MR. ECKSTEIN: Your Honor, Good afternoon. This is Kenneth Eckstein for Kramer Levin. I hope Your Honor can year me

THE COURT: Yes, and see you.

MR. ECKSTEIN: Thank you. Your Honor, Kenneth Eckstein for Kramer Levin, co-counsel for the Ad Hoc

Committee of governmental claimants in the he case.

Your Honor, we filed an objection to the motion, which I'm sure, as Your Honor indicted, you have had a chance to review. And we've all had the benefit of Mr. Huebner's comprehensive and thorough presentation.

I'm hesitant to repeat. And to the extent Your Honor believes that you've already heard particular points, please let me know and I will try to shorten my comments as much as possible because I am mindful of the time. I would like just to make a handful of points that I think are particularly important in connection with today's motion.

First, Your Honor, I also wanted to bring to the Court's attention the quote that Mr. Huebner referred to from the decision by Judge Glenn in the Residential Capital case, which I think in some respects captures the legal standard that the Court abided by in this case. And that is that the appointment of an examiner would be inappropriate if, among other things, there is no factual basis to conclude that an investigation needs to be conducted or if an appropriate and thorough investigation has already been conducted, or is nearly completed by a creditor's committee or a governmental agency, 474 B.R. 112, 121. We think those are the appropriate standards that should guide today's consideration and we think it is well-established that both of the standards that have been articulated in the

Residential Capital case resonate in this case and warrant denying the motion.

The movants have effectively conceded and an appropriate and thorough investigation has already been conducted in this case by the Official Creditor's Committee with the active support of the NCSG, the Ad Hoc Committee, and the MSGE, each of whom have been actively involved for the last 18 months in a thorough investigation that has been led most effectively by the Creditor's Committee.

Instead, Professor Lipson retreats to arguing that the UCC investigation has not been sufficiently publicized and in order to shoehorn into the argument that there is a factual basis for an examination in this case, he argues that we need to better understand the motivation or influences that the Sacklers may have had over the special committee and the board.

I think Your Honor has already heard Mr. Huebner articulate very cogently that there is simply no basis whatsoever for the (indiscernible) and there is clearly no evidence in the record. And Your Honor has already heard extensive presentations that the evidence is to the contrary.

Professor Lipson tries to insinuate that this was a case where pre-petition the Debtor's board and the Sackler family privately and secretly negotiated a settlement that

was dropped on the parties in interest to the creditors as the predicate for a Chapter 11 case. I think as Your Honor already has heard, nothing could be further from the truth.

As Your Honor knows, and as the pleadings that were submitted at the outset of this case and throughout have reflected, these cases were preceded by extensive, multi-year litigation in federal and state courts throughout the country pursued by the state's attorneys general for nearly every state in the country, plus hundreds of local governments and Indian tribes that were actively involved in a coordinated litigation. There was a multi-district litigation based in Ohio led by a vigorous plaintiff's executive committee. These parties coordinated massive pre-bankruptcy discovery and investigations leading up to multiple trials against Purdue and the Sacklers.

The governments, consenting and non-consenting states, participated in a year-long intensive negotiation against Purdue and the Sacklers to explore the possibility of settlement. There was nothing inevitable or pre-ordained about those negotiations. The debtors participated in those negotiations with the Sacklers, and as Mr. Huebner has explained, they were adverse to the governmental entities and the PEC.

The negotiations were supervise by the MDL judge, district Judge Polster, and by a highly-regarded mediator at

the time. These negotiations were intensive and were quite adversarial. As Your Honor knows, the prepetition negotiations ultimately resulted in a settlement framework. The settlement framework had the support of the members of the Ad Hoc Committee and to this day remains opposed by the non-consenting states. There was no restructuring support agreement, there was no definitive agreement.

But in October of 2019, there was a settlement term sheet. The settlement term sheet was not binding. It merely indicated that the parties who supported the settlement term sheet would work to see whether they could arrive at a settlement that would be the basis for a plan of reorganization.

At the outset of the case, the settlement term sheet was pursued in conjunction with an undertaking by the Creditor's Committee to pursue an extensive investigation during this Chapter 11 case that had the active support of the non-consenting states, the Ad Hoc Committee, and the MSGE. And as Your Honor knows, there was no steps taken by any parties in this case to commit to a settlement in this case until that investigation was, if not completed, was extensively explored.

Your Honor, there is no basis to suggest that the Debtor's board drove the process and that there was no alternative to settlement. Up until November 2020, the UCC,

the Ad Hoc Committee, and the non-consenting states, as well as the MSGE, were actively considering a no-settlement plan. And that alternative remains real even today if this deal does not ultimately come together. That has always been a real alternative. There was no inevitability of a settlement. In fact, throughout this process, I believe every party that has been involved in this case has had great concerns about whether or not we ultimately would be able to achieve a settlement that each of us could recommend to our clients.

Your Honor, it is the case that the Ad Hoc Committee continues to prefer pursuing a settlement rather than endless, unpredictable litigation that will go on for years and that ultimately at the end will in all likelihood have to return back to a settlement structure. But that is an issue that ultimately the Court will have to consider in connection with confirmation.

The fact that the Sacklers will receive a release in exchange for the settlement, if that settlement is approved, is certainly not remarkable or surprising and is certainly not a (indiscernible) for the examiner. That is essentially what the Court will have to consider in making a determination of whether or not to approve the settlement and to approve the releases that are embodied in the plan of reorganization.

The fact that the UCC has conducted a thorough and rigorous investigation -- even the movant acknowledged has been thorough and has been complete. And the fact that he could like more disclosure belies the fact that we just finished an extensive, multi-day disclosure statement hearing where, as Mr. Huebner indicated, the Debtor was prepared to accept all suggestions for additions, resisted essentially nothing. And Professor Lipson, frankly, should have, if he wanted to have more disclosure, participated more productively and constructively in the disclosure statement process and would have actually achieved more disclosure if he felt that there was something more to say.

As we know, there will be an unprecedented public repository of documents. And while Professor Lipson is complaining about the fact that that will take place post-confirmation, that also I think has been explained extensively and is completely logical and in fact will be the first time in my experience that something as unprecedented as essentially a public library of the discovery will be created as part of a plan of reorganization.

And finally, there will be a confirmation hearing where all parties in interest will have an opportunity to examine and listen to witnesses and where the Court is going to have an opportunity and a responsibility to determine

whether or not there is a basis to approve a settlement in this case.

There is simply no basis whatsoever for the appointment of an examiner to perform any role in this case at what really is the eleventh hour. This case has been unprecedented in so many respects, but the most important is that there has been a massive 18-month investigation that has been participated in by multiple parties acting on behalf of hundreds and hundreds of thousands of creditors, most of them private. There is at this point in time a proposed plan that is proceeding to confirmation in a matter of weeks, and we believe that there is no justification under the facts or the law for the appointment of an examiner to do what Mr. Lipson has now tried to explain, but I still am not completely clear makes a lot of sense. But regardless of the justification that he's trying to articulate in response to the Court's questions, we believe he has failed and we believe that the caselaw and the facts of this case strongly and compellingly support this Court denying the motion. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. CRAWFORD: Your Honor, Monte Crawford from Caplin & Drysdale on behalf of the MSGE group.

THE COURT: Afternoon.

MR. CRAWFORD: Good afternoon. We filed an

opposition, and I will try not to repeat those arguments here or the arguments raised above. But we would like to highlight a few points specific to the MSGE group.

The motion does fail to understand how the parties arrived at the (indiscernible) and ignores the substantial work done by the MSGE group and (indiscernible) parties, and it should be denied.

The motion to appoint examiner does not even mention the MSGE group or the Ad Hoc Committee or others. This failure in many ways demonstrates the fundamental flaw of the logic of the motion. Movants (indiscernible) examiner (indiscernible) committee was in fact independent when we approved the settlement agreement. But in addition to the points raised by Mr. Huebner, the current settlement is simply different from the original settlement framework.

The MSGE group arrived at its decision (indiscernible) and independent deliberation and with the benefit of a massive amount of (indiscernible) and considered (indiscernible) and in the many pre-petition cases (indiscernible) by the MSGE group's members against the debtors and the Sacklers. Its review and negotiation helped increase the settlement amount from $3 billion to $4.275 billion. It gave no weight (indiscernible) settlement framework in its decision (indiscernible).

It's also important to note that (indiscernible)

the AHC, the DOJ, and the NCSG, apart and independent from the Debtors and from each other, and each a substantial party in interest in this bankruptcy. And this undercuts the entire justification of the motion.

The motion for appointment of an examiner should be denied, as the appointment of an examiner is simply not appropriate under Section 1104(c), it's not in the best interest of the creditors, the public, or the estates. (indiscernible). There are over 100,000 personal injury claimants and these are in addition to those severed by (indiscernible). It is telling none of these groups are seeking an examiner and none of these groups has come forward to support this motion. There is not fiduciary (indiscernible).

And the reason no one has (indiscernible) an examiner is that those investigations (indiscernible) investigations (indiscernible) and would impose substantial (indiscernible) and payments to (indiscernible). (indiscernible). We join in (indiscernible) that we agree (indiscernible) clearly supports the view that this Court has discretion to whether or not to appoint an examiner. And we also agree that the doctrine of laches provides an independent ground for this Court to deny the request for (indiscernible).

In his reply brief, (indiscernible) that an

examiner is necessary because if the Board was not independent, then it would not be clear creditors have a meaningful choice (indiscernible). And he argues it would not be clear the UCC or other groups that are litigating (indiscernible).

But to echo a point made by Your Honor earlier, throughout the mediation and negotiation, the MSGE group always retained the ability to disagree and alter the settlement. And the MSGE group always maintained the threat of litigation (indiscernible). And of course the (indiscernible) did in fact change (indiscernible).

And for these reasons, the MSGE respectfully requests this Court deny the motion.

THE COURT: Okay. Thank you.

MR. PREIS: Your Honor, Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of the Official Creditor's Committee. May I be heard?

THE COURT: Sure. Thank you.

MR. PREIS: I know that you've heard now an hour-and-a-half or so of argument, so I'm only going to focus on (indiscernible) Mr. Lipson mentioned about the Creditor's Committee.

First, I want to make -- I'm going to make ten points. The first is the following. I want to take a moment to talk about Peter Jackson, the moving party. Mr.

Jackson lost his daughter, Emily, almost exactly 15 years ago to an overdose from taking one OxyContin prescribed for her uncle. Putting aside the motion in this case and the opioid epidemic, Mr. Jackson's loss of an 18-year-old daughter three days from the beginning of college should be enough to make everyone stop for a moment and cherish the time we have with our loved ones.

Point two, Mr. Jackson now dedicates his life to being an advocate for the reform of prescription opioids. In this way, he is like some of the individual members of the UCC who also dedicate their lives to fighting the opioid epidemic, whether it be through victim advocacy, counseling, or helping the families of those who have lost loved ones.

Point three, given our personal views of Mr. Jackson, it's very difficult to take an emotional and passionate and angry stance against him. And even worse, to be on the same side as Purdue in this proceeding. And it is a testament to both the seriousness with which the UCC takes its fiduciary duties and the unfortunate and in many ways just plain wrong statements that Mr. Lipson's pleading make, but it's exactly the position we found ourselves in.

Point four. As we noted in our papers, the UCC is supported in its objection by the following four groups. The Ad Hoc Group of Hospitals, the Ad Hoc Group of NAS Children, the TPP mediation participants, and the rate payer

mediation participants.

Point five, as you noted, Mr. Lipson was a bit all over the place in his pleadings about what he wanted. I know he said earlier the scope of what he wanted as examiner was to seek to examine the independence of the special committee. And if you think about it in biblical terms, he kind of believes that everything stems from the original decision to enter into the settlement framework by the special committee, which didn't happen. And so it's kind of like everything that's happened in the case is the fruit of the poisonous tree.

He also wants an examiner -- and I don't want to let this go because he says it five times in his reply -- he says he wants the examiner to independently assure the integrity of the reorganization process. He mentions those words five times in his reply. He later concedes that the UCC's independence is not in question, in Paragraph 31. But it's hard to understand a lot of what he says without assuming he's questioning everybody's independence in the case and integrity, including every state, every municipality, tribe, public claimant, private claimant, an of course the Debtors.

Third, he wants an examiner -- and I don't want to let this go -- to evaluate the work that has been done by all the other parties in the case and publicly report on the

analysis. This kind of has the feel of examining the examiner who examined the examiner. I'll address each of these in turn.

His first point stems from the unholy settlement framework entered into between the Debtors and the Sacklers that didn't happen at a time when the Sacklers controlled the Debtors, which Mr. Huebner explained. The facts don't bare that out.

On the public side, let's look at the original settlement framework. The states and the PEC entered into that deal, as Mr. Eckstein and Mr. Huebner pointed out. But furthermore, it's beyond comprehension for anybody who has spent even a moment with any of the AGs in this case to think that 23 sovereigns who like to call themselves sovereigns, or even aware of them for that matter, would agreed to a deal with the Sacklers based on the Special Committee's recommendation. If anything -- and I mean this in the kindest way possible to everyone involved -- the approval of a special committee of just about anything in this case would have been a reason for people to question it. Anyone who thinks otherwise has spent zero time with the state AGs.

As it relates to the UCC, we weren't involved in the pre-petition investigation. When we were informed, we never once felt constrained by the settlement agreement. We

did our investigation as if it didn't exist. We don't need to talk about the breadth of our investigation because that's in our letter and people have mentioned it. When we felt we had reached sufficient diligence -- and this gets to what Mr. Lipson put in his reply papers -- we put together a rather long analysis, something like 200 pages or so, and presented it to the mediation parties and non-consenting states, the Ad Hoc Group, the Debtors, the MSGE, and the mediators. We fielded questions from all the groups in our analysis. And after that, we negotiated. We negotiated unconstrained by settlement framework, by the Debtors, or by Special Committee. The only thing we were constrained by, and we say it in our letter, was the bankruptcy process in phase one of the mediation. But that's not a bankruptcy issue. That's more about the opioid epidemic and the reality of needing to abate the crisis and compensate victims, not about the bankruptcy issues or about the decision not to -- agree not to appoint an examiner or seek a trustee.

And to be clear, we absolutely, one thousand percent were ready to file a motion seeking standing to prosecute the estate cause of action against the Sacklers. And we spent hundreds of hours debating with numerous parties whether seeking to lift the injunction and go full-bore against the Sacklers was the right outcome for this

situation. Indeed, Mr. Lipson, we filed not one, but two briefs which have been largely unredacted seeking to compel the production of privileged documents. In those briefs, we laid out some of our analysis that ultimately would have been part of any standing motion. And we ultimately made the decision that we did based on looking at every facet of this situation.

But I can assure you we never once, never, never, never looked at the settlement framework as something we needed to work within, nor did we ever base anything we did on what the Special Committee did. And so while were not a sovereign like the states, we carried with us a fiduciary duty to every single unsecured creditor in this case, which includes sovereigns just as much as it includes individuals like Peter Jackson.

Point seven. Mr. Lipson states in his reply brief that he wants an examiner to independently assure the integrity of the reorganization process. We, the UCC, are part of that process. Indeed, an important part. We take his statement to mean an examiner would be necessary to assure, among other things, the integrity of the UCC, its members, and its work. For the life of me, I have no idea what that means or how Mr. Lipson, without ever once calling me or reaching out to talk to the UCC or its members, can come to this conclusion that the UCC's integrity needs to be

independently assured. It's instructed to remember that the UCC contains, among other things, four individuals who want nothing more than to take every last dollar, if not more than every last dollar, from the Sacklers and who have fought very hard to make sure the UCC satisfies itself and uncovers every single one. And to (indiscernible) opioid litigants who, while perhaps less emotional, want nothing less.

And also the UCC contains three members who take their fiduciary duties very seriously but who are not opioid litigants. And we have three ex officio members, a county, a (indiscernible) district, and two Native American tribes, who care deeply about the cases and every single one of the issues associated with them.

For Mr. Lipson to question the integrity of that group of people and institutions with whom he never asked to spend a moment with or talk to is not just insulting, it's careless.

Point eight. It seems that Mr. Lipson wants someone to examine the work that was done by the UCC. He says so in Paragraph 37 of his reply brief. This feels a little bit academic. Basically everybody in this case has examined (indiscernible). The Sacklers -- sorry, the states examined the Sacklers pre-bankruptcy. We investigated the Debtors and the Sacklers and the estate causes of action

post-bankruptcy. The non-consenting states have examined all these things. So one party examined X, the various parties examined that, and then various parties examined all of that and then some. Now Mr. Lipson wants someone to come in and examine the examinations? Will someone then be needed to come in and examine the examination done by the examiner to make sure that it has integrity? At what point does this end?

Point nine. And this -- and, Judge, you hit on this earlier. Mr. Lipson seems to think that an examiner is just going to review the work done and then publicly file everything he found, everything that the examiner found. We are dumbfounded by this. Would the examiner not be found by the protective order? Is he going to run roughshod over the protective order in some way that we weren't when we were able to un-redact, along with the (indiscernible), a whole bunch of (indiscernible) privileges motion?

My last point. Mr. Lipson is banking on the fact that this Court will feel compelled to appoint an examiner by virtue of the wording of the statute.

Messrs. Huebner, Eckstein, and Crawford have all pointed out to you that many courts have determined that wording of the statute does not make appointment of the examiner mandatory in all circumstances, and that based on the facts in this case, a court can determine not to appoint

an examiner at all.

They've also pointed you to the laches argument. We agree obviously with the points they made and would urge the Court not to spend even a penny of this estate appointing an examiner.

Thank you, Your Honor.

THE COURT: Okay, thanks. Did anyone else want to speak in opposition to the motion or on the motion other than Mr. Lipson in brief response?

Okay, why don't you go ahead, Mr. Lipson?

MR. LIPSON: Thank you, Your Honor. So I want to make four points. The first is that a great bulk of what we have just heard has nothing to do with our motion. Rejectors attack me, they attack my work as an academic, they focus on their own integrity. They protest a great deal. They completely distort the relief that we want and the reasons for seeking it. But this is not about me, and this is not about them. This is about the fact that there are problems in the factual record that they have not addressed. They have not in any way addressed any of the concerns that we have raised.

Number one, the Debtors themselves have said in order to justify the preliminary injunction, they were and are inextricably intertwined with the Sacklers. They and their counsel are parties to or have been parties to joint

defense of litigants and common interest agreements with the Sacklers.

THE COURT: Can I interrupt you?

MR. LIPSON: And -- and --

THE COURT: Can I -- let me --

MR. LIPSON: And to this day --

THE COURT: I can't let these to points -- no, please. I cannot let these two points go by.

When you say inextricably intertwined, are you actually alleging that that includes management or control of the Debtors post-bankruptcy? Are you actually alleging that?

MR. LIPSON: No. Your Honor, I don't know what it means.

THE COURT: Okay.

MR. LIPSON: That's the point.

THE COURT: Yeah, you don't know what it means. But you're not alleging that because you have no evidence of that. Right?

MR. LIPSON: We have the Debtor's own admissions. So all we have to do --

THE COURT: No, no. The debtor -- honestly. You believe that that admission applies to the post-bankruptcy period as far as management or control of the debtors? Did you read the papers? Did you see anything about interfering

with management? That is a common ground for an injunction to protect third parties, i.e. you can't sue management or the Board because they are active in running the company. Did you see that in the pleadings?

MR. LIPSON: No, but that's not --

THE COURT: No. So do you think it might be a logical inference that the inextricable nature that they're referring to is with regard to the claims against both of them and the source of recovery and the fact that there would be inevitably the Debtors pulled into the litigation against the Sacklers? That didn't jump out to you as the logical inference?

MR. LIPSON: That's certainly an inference, Your Honor --

THE COURT: Is there any other -- is there any other, given the fact that they did not allege and everything that you have heard today belies the assertion that the Sacklers have any role in running these debtors post-bankruptcy?

MR. LIPSON: We are not saying that they ran the debtors post-bankruptcy --

THE COURT: Any role whatsoever, whatsoever, including in respect of the most important aspect, controlling in any way the entry into the settlement agreement?

MR. LIPSON: Your Honor, we are --

THE COURT: Answer my question. Yes or no. Do you have any basis to assert that fact?

MR. LIPSON: Which fact, that they managed the debtors?

THE COURT: That they had any role post-petition in running the debtors, including, without limitation with regard to the debtor's decision to enter into and support the plan?

MR. LIPSON: With respect to running the debtors, no. But that's not the concern --

THE COURT: And finish the rest. Do you have any basis to believe that?

MR. LIPSON: Do we have any basis to believe that the Sacklers might have interfered with the Board's decision to --

THE COURT: Yes, the decision to enter into the plan and to support the plan.

MR. LIPSON: Absolutely.

THE COURT: What? What is it? What is it?

MR. LIPSON: I'll say it for a fifth time. We know that the debtors, it appears, had to create a proxy for the Sacklers such that they gave up their right to remove directors on the special committee in November of 2019, number one.

Number two, we have never seen the governance documents of --

THE COURT: Have you looked?

MR. LIPSON: Obviously ---

THE COURT: Have you looked?

MR. LIPSON: Obviously -- obviously, Your Honor, the charter is publicly available. And sorry that Mr. Huebner is not so good at quoting after all, but we never say we didn't see the charter, obviously. We quote from the Charter. It's the bylaws, it's the shareholder agreements. It's all of the other governance documents that might give the Sacklers the ability to control the board. If they were not controlling the board or didn't have that power, then why was the proxy necessary? That's fact number one.

Fact number two, the common interest agreements (indiscernible). I do not understand how the Sacklers and the debtors can have a common interest once they are in bankruptcy.

THE COURT: You don't think that there are the same types of claims asserted against both the company and the Sacklers?

MR. LIPSON: There may be, but the --

THE COURT: There may be. You just said there's an inextricable link, right?

MR. LIPSON: Right. And so --

THE COURT: Mr. Lipson, at some point you have to actually be realistic. Right? I mean, is this what you teach your students, just to assume these sorts of things without actually, you know, doing any real pragmatic analysis?

You know, I actually had Michael Avenatti appear in front of me. He spoke these ways, too. It might be -- it could be the debtors haven't shown, et cetera. That didn't last very long. He had no evidence. He left, and he never came back. I hope you're not teaching the future Michael Avenattis of this world at Temple.

Go on with your argument.

MR. LIPSON: I'm not sure it's appropriate to personalize this sort of an argument, Your Honor. And I'm not sure why others are doing it and --

THE COURT: I think there is a responsibility to first ask for the relief that you're actually asking for, and second, to back it up with some facts and legal argument. I'm testing the facts that you are asserting. The first one you asserted is that the Debtors have acknowledged in their preliminary inunction motion that the Sacklers are inextricably intertwined with Purdue without distinguishing between pre and post-bankruptcy. You haven't given me a credible answer in response to that.

If you think that's personal, it is. Because at

some point, you do have an obligation to be real. All right? To be realistic and to not just throw out statements that people who are not lawyers, people who have suffered a lot and who really don't quite understand the law think, oh my god, are they letting the Sacklers go? And they read stuff like you are submitting and they see quotes that say, well, academics have said the following, the process may not be conducted with integrity. What do you think they believe?

So, yes, you do have an obligation to support it with facts and not History Channel pleading.

MR. LIPSON: Are the bylaws public? Are they available? Do they permit the Sacklers to --

THE COURT: Do you doubt for a minute, Mr. Lipson, that if in fact the Sacklers weren't exercising control over the board in the way that would affect the decision-making in this case, that the creditors' committee and all of the other parties in interest, including all 50 -- well, all 48 states because to have settled -- wouldn't be moving immediately for a trustee? Do you doubt that for a minute? Or that such a motion would be granted if in fact it was the case?

MR. LIPSON: Well, as we pointed out, Your Honor, since the creditors' committee stipulated that it wouldn't do so for the first several months of the case, we don't

know.

THE COURT: Because they were doing the investigation to see. And of course the 48 states did not so stipulate. So you really haven't answered my question.

MR. LIPSON: Your Honor, I might point out since the Debtor's lawyer and Mr. Eckstein both made a point of talking about ResCap, that ResCap does say what it says, but it also resulted in the appointment of an examiner. I believe Judge Gonzalez was appointed in that case. And let me read to you, since everybody likes to read from cases --

THE COURT: I've read it. I understand the case. I've read it. I understand the case. You can go on.

MR. LIPSON: So an examiner was appointed there. The other cases that they cite, Spansion, Dewey & LeBoeuf, these are not cases of great public interest. This is.

Mr. Huebner has said over and over about -- over and over again, rather, how significant the public interest in this case is. If in fact everything is as fine as they claim, the examination into the very limited question we have posed, the very limited concern we have, should be very easy.

The creditors' committee could very easily have published their analysis, released their analysis --

THE COURT: No, they couldn't. Do you -- have you ever moved for approval of a settlement agreement in

bankruptcy court?

MR. LIPSON: Not in many years.

THE COURT: Yes. Okay. And do you think that it really makes sense, particularly where the settlement agreement can be breached in the future and the settling party has the right to proceed against the target on all counts as if the settlement agreement hadn't happened to lay out all of your theories, pro and con? Do you really think that's advisable, to blow that out, to say that? Have you ever read a motion for approval of a settlement agreement that actually says that?

MR. LIPSON: Your Honor, that's exactly why we think there is concern about what's happening in these cases. The settlement agreement -- the settlement is what justifies keeping the analysis of the independence of the special committee and the board from public knowledge, then that means the settlement is the problem. It's like the protective order. Right? Within the protective --

THE COURT: So you wouldn't -- so that basically means you wouldn't have a settlement, right? You would just have one alternative in a bankruptcy case, which would be to litigate.

MR. LIPSON: No. It means you have what Congress intended, which is an examiner and a settlement.

THE COURT: Okay. You can go ahead.

MR. LIPSON: And unlike -- contrary to what Mr. Preis said, we are not asking for an examiner to redo anybody's work.

THE COURT: Really? Well, let's read that, then. Let's read Paragraph 17 of your reply and Paragraph 18. "The motion plainly anticipated that key participants in these cases may have conducted this work" may have, "and thus seeks an examiner not to redo it (unless it was not properly done in the first place)". Groups, right? Including the Committee. And then in Paragraph 18 you say that, "It is true that some of these parties are adverse to each other, but their motivation, i.e. their adverse nature and their fiduciary nature, is likely to demaximize --" I don't know. This ungrammatical. It says, "This may be true, but their motivation is likely to be demaximize the settlement amount, not to assess and report on the integrity of the process", whatever that means. What does that mean? It means to report on their motives, right? Their integrity. And you don't think that's embodied in the settlement itself? You want someone to question their motives? You want to question the motives of the Unsecured Creditors' Committee, the integrity of the Unsecured Creditors' Committee, the integrity of the group that Mr. Eckstein represents, the integrity of the people who represent the personal injury claimants? I mean, that seems

to be what you suggest here. So that's what you want, an integrity finder?

MR. LIPSON: Are you finished?

THE COURT: But not to analyze what they did, just to decide whether that was done with integrity? How do you distinguish between those two? I guess it wouldn't be with a bankruptcy professional who actually knows what they're doing because they are all in small groups to scratch each other's backs, right? So the people that you asked to review your articles, including judges and bankruptcy professionals, won't be reviewing your articles in the future, right? You're not going to ask me to do that anymore in the future, right? Because obviously we can't be relied upon to act with integrity. So it would have to be someone who doesn't know about the process, won't be reviewing the work that was done, but somehow has to assess and report on the integrity of the people who did it.

MR. LIPSON: Are you done, Your Honor?

THE COURT: I am. I'm reading your -- I'm reading Paragraph 17 and 18 of your reply, which you submitted, and I'm trying to ask you what on earth that they mean.

MR. LIPSON: What we mean is exactly what we said, which is our concern is that the Sacklers used undisclosed governance powers to influence (indiscernible) --

THE COURT: That's all these pleadings are about?

That's all these pleadings are about? So you could tell your client and anyone else who asks you what all these questions and concerns were about integrity, and that included the Committee, the MSGE, and others, that that's all you were talking about when you raised questions as to the integrity of the process?

MR. LIPSON: All of those questions.

THE COURT: What?

MR. LIPSON: Correct, because those are evidence, those are facts that have given us concern. You may not --

THE COURT: So we shouldn't ignore --

MR. LIPSON: You may not agree --

THE COURT: -- the rest of the statements in your pleadings?

MR. LIPSON: Absolutely not. You may disagree, Your Honor, with my assessment of the facts. You may disagree with the importance of the facts. You may mischaracterize the facts (indiscernible) --

THE COURT: So then I have to ask you again the question, what is it that distinguishes the examination that was done, which you don't want to redo, you want to have the same discovery, no additional discovery, or anything pertaining to that examination that's already been done, but just to assess and report on the integrity of it?

MR. LIPSON: Well, Your Honor, that's --

THE COURT: And I'm assuming when you talk about the examination, you mean the work done by the Committee and the analysis of it by the 48 states and the governmental entities and all those other parties, right? So you want to examine their integrity?

MR. LIPSON: I don't know how many times you need me to say the same thing, Your Honor. I already said no. What we --

THE COURT: Well, all right, but then when I asked you, okay, fine, then you said -- and I said, well, so we should ignore those aspects of your pleading, you said no, I shouldn't ignore them. So that's why I'm coming back. So I guess I'll take your last word on it, which is, no, that's not the examination you want and therefore I should ignore those aspects of your pleading because they're just hot air. Right? It's just hot air. It might get a good quote somewhere, but it's not anything having to do with the relief that you're seeking when you question the integrity of the process.

I think Mr. Preis was right on point when he noted that your pleadings refer, I think, five or six times to questioning "the integrity of the process of the bankruptcy case." And actually, that's not what you're asking now to have an examination on.

MR. LIPSON: No.

THE COURT: I think that's important to get on the record. And that's why I let the other parties because long as they did, because one's reputation and one's integrity is important. And the facts that they laid out on the record should show that you really aren't, with facts, attacking that.

MR. LIPSON: We believe that there are plenty of facts asserted in our motion, Your Honor, and we've already said --

THE COURT: Going to the integrity of the Committee's work?

MR. LIPSON: No, Your Honor. That is not what we want investigated.

THE COURT: Okay. Good.

MR. LIPSON: The integrity of the process --

THE COURT: All right. I think we've covered enough of this, then.

MR. LIPSON: The integrity of the process is affected by the power that the shareholders have to influence a board of directors --

THE COURT: Okay.

MR. LIPSON: -- before and during the (indiscernible).

THE COURT: All right.

MR. LIPSON: The parties spend a great deal of

time talking about the deal, about the fact that the deal changed, about the fact that the deal is better. It hasn't changed that much, but it doesn't make any difference --

THE COURT: (Laughing)

MR. LIPSON: It doesn't --

THE COURT: (Laughing)

MR. LIPSON: The structure of the deal --

THE COURT: Oh, my goodness, Mr. Lipson. It's just incredible. Shall we subtract 4. --

MR. LIPSON: It's not relevant, Your Honor.

THE COURT: Shall we subtract the amount from the original amount, and shall we compare the two? Shall we compare the remedies? Shall we also reflect on the fact that it still isn't a deal because there is ongoing mediation, which I directed, which we haven't addressed? How do you think your motion would affect those negotiations, which really are important, which really might further improve the deal?

How do you -- have you negotiated a deal like this before? How do you think that the existence of a pending examination would affect those negotiations? Wouldn't people just wait to see how that happens?

MR. LIPSON: Your Honor, if everything is as fine as the parties all claim, then the examination that we are calling for should have no effect at all.

THE COURT: The negotiation, it was with the parties who are not on board. How do you think the Sacklers and those parties would engage in those negotiations in the mediation, knowing that there's this other question mark out there? You didn't give any thought to that, did you?

MR. LIPSON: Of course, I did.

THE COURT: Oh, really?

MR. LIPSON: But the --

THE COURT: What thought did --

MR. LIPSON: But the mediation is --

THE COURT: -- you give to it? How do you think it would affect it?

MR. LIPSON: The mediation is not relevant to the question of --

THE COURT: Of course --

MR. LIPSON: -- whether an examiner should be appointed.

THE COURT: Oh, of course not. Oh, it's not relevant at all, right? Because you don't know how to negotiate. Honestly, this is just puerile. It's really embarrassing, Mr. Lipson, I've got to say.

MR. LIPSON: Your Honor, I don't think anybody benefits from personal invectives, so let's --

THE COURT: If people file pleadings like this and argue like this, there are consequences. This is a public

forum. This is a litigation. This is where the facts come out. This is where people are judged.

MR. LIPSON: If Your Honor does not agree with our concerns or our assessment of the facts, then you should deny the motion and we will move on.

THE COURT: Okay. Do you have anything more to add?

MR. LIPSON: No, Your Honor.

THE COURT: Okay.

MR. HUEBNER: Your Honor, I know this is a little bit unusual, but just because of the process questions, could I make four points? And then I will be done, and I will be very quick?

THE COURT: Okay.

MR. HUEBNER: Number one, it's not really an apology, but it is an explanation. (indiscernible) the issue is not that it is personal in the personal sense. The issue is that you originally moved for an examiner in your own name as an academic. And you had spoken extensively on this case, and I actually took the time to listen to your lectures and take out of it what I believe is motivating your involvement. And I actually think that it is important for people to understand what brings people to court. I don't actually think I accused anybody of impropriety or misconduct.

You have a view of the bankruptcy system and how it affected this case that you lay out at length in your lecture and otherwise, and I actually thought it was important for the parties to understand that. And there is a public link to your lecture that anybody is welcome to go and read. There is also a synopsis of it on "The Temple 10-Q", the Temple Business Law magazine, and it's quite sharp in accusing the professionals in this case and the parties (indiscernible) leaving moral considerations behind in order to "get the economic (indiscernible) done".

And given ironically (indiscernible) this hearing, which is once again spending hours and hours figuring out how to help an incarcerated pro se person file a claim months after the bar date, and following a case where we're talking about tens of millions of dollars in a repository, and pleading guilty to fines after years of denying them, and the exit of every single Sackler from the board, and the appointment of a (indiscernible) Special Committee, the notion that people are being told, especially even more than the Debtor and the Special Committee, the members of the UCC that they threw moral and personal dignity concerns to the wind to get a money deal going. I just don't think you understand how terribly painful it is for people who devoted years of their lives (indiscernible) as much as possible with this case.

Number two, I ought to say congratulations, because in fact, we prevailed with respect to how the Judge ruled. Your primary request was to confirm that the deal was not borne in an original sin that irrevocably (indiscernible). You essentially got representation signed under Rule 9011(b)(3) by the UCC, MSGE and the AHC, answering your question. All three of them signed pleadings that said in essence, we could not have cared less what the Special Committee thought. The deal was not foreordained. We made the decision ourselves. And so I actually think, ironically, you got the answer.

And then each of those three parties very strongly validated to you with different levels of passion that the message was equally clear that they reached their decision entirely and utterly independently, that it was never foreordained, and they stood ready and stand ready, even now, to litigate if needed, if we don't get to the goal line.

So I would ask you to realize that on some level, what I think earlier today you said was your primary question, in fact you got the answers. You could have gotten them, ironically, by probably calling any one of us and just asking about it or reading things that I think laid it out. But if (indiscernible) wasn't clear before, if there's one thing that's imported out of this meeting that I

think cannot be unclear to anyone on the planet now, is that the UCC, the AHC and the MSGE, after a month of mediation, utterly independently negotiated a deal opposite the Sacklers.

The Special Committee was there as well with Mr. Preis -- that I thought it was a little bit unkind actually, but I'll let it go -- that this constituency probably would do the opposite of anything the Special Committee thought or recommended, and if that didn't advance their (indiscernible) structure and actually detracted from it.

Three, the bylaws -- and I guess I sort (indiscernible) -- I actually didn't remember that we were talking about ending the bylaws and not (indiscernible) corporation, we could have gotten those in one second flat, like hundreds of other (indiscernible) in the case and their representatives, by signing a protective order and having access to all diligence. You had chosen not to do that, which is fine, despite being involved in the case since its opening months, which is fine, but please don't pin that on us.

Like we prepared (indiscernible) early on. We (indiscernible). And since you are not representing a litigant in the case, it's not really fair to say that we didn't do what litigants do when they want to access documents. You could have read the bylaws. You could have

asked us about it. And you could have raised the issue in the disclosure statement.

And finally, to repeat one last time, because it came up in your opening remarks, the UCC explained in its letter -- and I read in almost this full-page paragraph (indiscernible) why they did not, and we also did not, for the same reason, lay out in detail all the considerations, both the weaknesses and the strengths (indiscernible) Sacklers.

We may have to sue some or all of them someday. There are 10 pods. If any pod defaults, we have remedies and rights and snapbacks, and the leases fade away and the foreclosure leases fade away. And the Judge got it exactly right. It is precisely to protect the constituencies for who we are fiduciaries that were not ever going to lay out in detail, here are the things that we're afraid of. Here are the things we might have lost. Here are the things we were most bullish about. Here's how we weighted the (indiscernible) and Sackler facts. Here's how we (indiscernible) Sackler. Why? Because that would be suicide and it would be a breach of our fiduciary duties to lay out the weaknesses and the strengths of our case.

The issue, at the end of the day, is that unlike the case, which does happen -- and I think we just picked the wrong case -- where only an independent committee of a

board, only appointed by (indiscernible) a private equity firm, does a deal, and that may or may not be subject to (indiscernible). Here you have the whole country that was opposite the Sacklers. Every AG, every municipality, and a fearsome UCC, who hit them harder than any UCC basically ever.

But again, I want to end where I began. We don't treat this count (indiscernible) loss of the Jackson family or any of the other families. But the process actually work. And the AHC and the MSGE and the UCC, even if you don't trust the Special Committee, there's no (indiscernible) all (indiscernible) government or victim did not ensure both the moral values and the dignity values, as well as the economic values that need to be indicated, and (indiscernible).

You, assuming you actually comply with the procedures that the Court ordered, or anyone else is welcome to challenge at the confirmation hearing whether the Creditors Committee (indiscernible) -- sorry (indiscernible) -- whether the Special Committee or the board operated and made its decisions free of (indiscernible) influence or (indiscernible) Sacklers. It's a fair question. And as I said before, the MSGE is exploring it correctly.

Let me be very clear, because I didn't say this before. I am very, very (indiscernible) based on everything

I know, and I know quite a lot, that the Special Committee has in fact (indiscernible) of inappropriate (indiscernible) influence or connectivity, that each one of them came to the company in a way that was clean and pure and appropriate and free of prior (indiscernible). That they did their job exactly as one would want them to do. And that is one of the things we have to prove at confirmation, and we will be doing so.

But please don't mistake the fact that we did not want to detail factual defenses of Special Committee (indiscernible) reply, believing that when the time was right and appropriate, we will show all of that and more. The Judge asked us to add dozens of pages to the (indiscernible) parties, which we did. We literally have (indiscernible).

But we, like you, you know, could not possibly feel more strongly about vindicating the propriety of the process that led to the settlement, which is a difficult settlement. Nobody is unaware of the fact that a whole bunch of money left after they paid this. No one thinks it's perfect. No one (indiscernible) side, which is that they didn't have (indiscernible). But it doesn't mean people didn't do their jobs and didn't act with integrity and traded away things inappropriately for inappropriate reasons.

(indiscernible) the passion is so strong, I think you genuinely don't realize how brutal your theory is. And we're here, the fact of unquestionably at the ultimate upper end of the spectrum, seeking relief in front of a Federal Court, based on no facts, and frankly explanations of law that we don't agree with. It's just something we cannot countenance, you know, this far into it.

THE COURT: Wait --

MR. LIPSON: Your Honor, if I can just respond very briefly?

THE COURT: Yes, that's fine.

MR. LIPSON: If I understand what Mr. Huebner just said, he said something incredibly important, which is that in the entire time the Special Committee has existed, including before November of 2019, it was independent. And that's very, very helpful. Now, maybe that's woven into the disclosure statement somewhere else, but I think that's a really important statement.

If I can just step back for a second, we understand that everybody would much prefer to get a deal done. And we understand that this has been disrupted, and I am sorry if that has been disrupted. We do not intend to cast aspersions on any (indiscernible). We are concerned that those inside the case simply do not see what it looks like from outside.

And as I said before, the questions that we have about the board's governance, the Sacklers' influence over the board, will not go away after confirmation. But if Mr. Huebner has been able to make that assurance, that is extremely valuable. Thank you.

THE COURT: Okay. All right. I have before me a motion by Mr. Jackson, Peter W. Jackson, for the appointment of an examiner in these cases, under Section 1104(c)(1) or (2) of the Bankruptcy Code.

I must say that most of this hearing, I think quite appropriately, has dealt with the motion papers and the statements made in them, as opposed to what the movant's counsel, Professor Lipson, has stated, albeit that that differed from the pleading that was filed at 9:30 last night, is really the relief that's being sought as far as the nature of the examination.

I think it's important not only to deal with that request for relief, which was really only clarified this morning after extensive prodding, but also the language in the motion. I say that because these are very public cases with hundreds of thousands of people, if you count family members, who are not represented by lawyers, who know about the case mostly from what they read or hear about in the media, which, correctly, reads the pleadings and assumes that there is some cogency to what is actually filed. I

believe that in respect of this motion, those people have been misled, and in fact, sadly misled.

Again, this is a public case where tremendous harm is intended to be addressed. The victims of that harm certainly no that they have been harmed, and they want to make sure that what comes out of this case is the best result for them.

When it is asserted with no evidence that that process lacks integrity, and that the fiduciaries, both under the Bankruptcy Code and their own representatives, somehow have misguided motives, or were misled or confused, or somehow acting without integrity, that's a problem.

It's particularly a problem when a law professor, who one would think would understand how courts work, would understand that integrity is the fundamental basis of the legal system, suggesting a series of "questions", "concerns", "issues", without any real support that that's not how it's working here. That goes so far as to state that the Court and the fiduciaries here have some form of backscratching relationship that prevents them from pursuing the right result, as required by the law, with rationales to suggest, for example, that judges may rule one way because that's not as justice requires, but for some other reason, which is unarticulated, but nevertheless laid out as a concern or at issue. That the people who practice in the

court may for some reason not want to pursue their clients' rights to the full, to the best of their ability, because somehow they want to appear again later in the court in some other matter, as Footnote 15 on Page 17 of the motion suggests, as opposed to doing their best job in the court, in the matter in which they are proceeding, is not only bizarre and totally illogical, but again, simply misrepresents to the public, who are employers, what lawyers do.

Of course, it's all qualified by, well, we don’t mean any disrespect or, you know, of course, judges take seriously their rulings, although it's couched in the draft article that's cited as legal authority by saying, well, judges may do that, but sometimes when it's important, they may not, as the discussion of Judge Isgur in Mr. Levitin's article suggests. I guess Mr. Levitin left it up to himself to determine what was important and not. I would tell you that Judge Isgur and every other judge in this country, including me, takes every issue before him with the utmost seriousness, and only looks at those issues and none others, and certainly doesn't look into the future as to what might be filed in front of him or her. And to suggest otherwise, particularly coming from an academic, is shocking.

Now, as I said during oral argument, at least I give Mr. Lipson the credit of taking the heat and appearing

here today, as opposed to just writing a draft article, as his colleague, Mr. Levitin did. But I really think it's a sad day when someone who calls themselves an academic, a scholar, engages in that type of ad hoc rationale.

This motion began on Page 1 with the wonderfully quotable and totally off point, "These cases have been overshadowed by a single critical question. Who is responsible for the Debtors' confessed crimes and the harms they caused?" And that's what's defined as the Sacklers allegations, the crimes.

And then that paragraph ends by saying, "While the case has involved massive, perhaps a record amount, of discovery, it has been contained among and analyzed by a small group of case insiders.", who are then discussed at Page 17, as I have already described, as somehow people scratching each other's back, and not actually getting to the truth or to justice.

And by the way, Mr. Lipson, when I say justice, I don't distinguish between justice and dignitary justice. In fact, it's a term I'd never heard before. And when I looked it up, it comes out of a completely different context than you and your colleague, Mr. Levitin, have used.

All justice is dignitary justice. Justice includes a sense of the dignity of the people who appear before one. It also includes a responsibility to get the

facts and the arguments right. Justice assumes dignity. That's inherent in the oath of office, to do justice to the poor and the rich, the same justice.

These cases are not about crimes. This is not a criminal case. When I get letters from people who say, how can you "absolve" the Sackler family and let them get away with it, people are thinking of crimes, or they're thinking of something that a ruling in a civil case cannot confer, moral absolution. That is a different topic, as a law professor should understand.

This is a case about who should pay money, based upon claims, and whether that money is best used in a collective settlement, in a collective proceeding, which is the very nature of bankruptcy. And clearly, there is no more collective proceeding than this one, since it involves 48 states, the Federal Governments, hundreds of thousands of individuals and other claimants. Essentially, it involves the entire country.

It is a disservice, not only to the people that I believe you have slandered, but also to the public, to mislead them about what has happened in this case. Most of these pleadings, including the reply papers, do just that. They talk in vague terms about assessing and reporting on the integrity of the process.

And contrary to the remarks at the beginning of

this hearing, that process, one could clearly infer from reading these pleadings, involves not only the Debtors but also the Official Unsecured Creditors Committee and, I think, 11 or 10 other committees in this case and the Court.

Now, what the relief ultimately being sought here is is quite different from all of that. As I understand it, what Mr. Lipson is now seeking is that an examiner be appointed to investigate whether the Debtors acted independent of the Sacklers in filing and seeking confirmation of the plan before the Court, which includes within it an agreement between the Debtors and the Sackler families, as set forth in the plan and disclosure statement, which was also negotiated with and signed onto by most of the parties in interest in this case, including the Ad Hoc Group of Consenting States and Governmental Entities and the Official Unsecured Creditors Committee, a much more narrow task for an examiner than the various formulations of the proposed examination set forth in the motion and the reply.

Section 1104(c) of the Bankruptcy Code says that if the court does not order the appointment of a trustee under Section 1104, then at any time before the confirmation of a plan on a request of a party in interest or the United States Trustee, and after noticing a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including

an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor, of or by current or former management of the debtor.

Let's just stop there before we get to the two clauses that trigger the foregoing examination. The named allegations to be investigated, fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor, of or by current or former management of the debtor, none of those things is within the scope of the examination that is actually being sought by Mr. Lipson.

He has not alleged fraud; he has not alleged dishonesty; he has not alleged incompetence, misconduct, mismanagement or irregularity, as far as the decision by the Debtor and the Special Committee to propose the plan. Of course, those are not the only things that could be investigated, but they give a good indication of what Congress felt should be investigated.

Again, what he now says the investigation should entail is a determination or an investigation as to whether the Debtors' Board, and more specifically the Special Committee, on its own, without direction or influence by the Sacklers, determined to propose and seek confirmation of the plan.

It is crystal clear, in fact it is beyond doubt, notwithstanding insinuations in both the motion and the reply, that that plan and the pursuit of it was dependent not only on the Debtors signing onto it, but the agreement by the Unsecured Creditors Committee, the Ad Hoc Committee, and others, who separately and independently negotiated, after separately and independently conducting the most massive due diligence that I am aware of in any case under the Bankruptcy Code, of potential causes of action against the Sacklers.

Indeed, the motion does not dispute that that happened. In fact, it states that the examiner would not even attempt to redo that investigation in any way. One wonders, then, why it is relevant to look at the Debtor alone and the Special Committee. The objectors say it is not, because they separately made the determinations that they did in support of the settlement. And it is clear to me from statements made on the record during the course of the disclosure statement hearing that obtaining those parties' agreement was critical to proceeding with the plan by the Debtors.

Again, the motion suggests either artfully or inartfully -- it's hard to know -- that those parties also were somehow acting improperly in making those determinations, but the suggestion is not borne out by

anything in the record. And I think -- although it's hard to follow him sometimes -- Mr. Lipson disavowed it during oral argument.

Under Section 1104(C), an examiner is not supposed to be appointed in every case to conduct that type of an investigation, as is appropriate under the words of the statute. An examiner shall only be appointed if, 1, such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or 2, the debtors fixed liquidated unsecured debts, other than debts for goods, services or taxes, or owing to an insider, exceed $5 million. As noted, the movant seeks relief under both of those sections.

Section 1104(c)(1) clearly provides a judge discretion to appoint an examiner. The appointment is only appropriate if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, so that even though the section is introduced by the word "shall", that is the overall section, Section (c), it is clearly discretionary.

And in fact, it is highly unusual for a judge's decision on such a discretionary appointment not to be upheld on appeal. See Clifford J. White III and Walter W. Theus, Jr., Chapter 11 Trustees and Examiners after BAPCPA, 80 Am. Bankr. LJ, American Bankruptcy Law Journal 289, 302

(2006). "In fact, no District Court or Court of Appeals decision has been reported that reversed a decision by a Bankruptcy Court if appointing or declining to appoint an examiner under (c)(1)."

This district has adopted the discussion in 7 Collier on Bankruptcy, Paragraph 1104.03, that "Mere allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by former or current management are insufficient to justify the appointment of an examiner under Section 1104(c)." In Re Dewey & LeBoeuf LLP, 478 B.R. 627, 640 (Bankr. S.D.N.Y 2012).

The Court needs to focus on whether such appointment is in the interests of creditors and the estate instead. See In Re JNL Funding Corp., 2010 WL 3448221, *2 (Bankr. E.D.N.Y. August 26, 2010).

In conducting such an analysis, the court looks at a number of factors, including whether the basis for the examination is warranted in the pleadings by sufficient facts. Second, whether other parties with a fiduciary interest or fiduciary obligation, or alternatively, a strong practical interest in getting to the bottom of the alleged irregularities, is already conducting such a process in the state in which it is in. And that is related to the third point, the timing of the request.

This is in part based upon the undeniable cost of examinations, both in terms of the hard costs of conducting the examination, which includes not only the examiner's costs but the costs of the people that he or she deals with, as well as the time and delay factor with respect to the examination.

Mr. Lipson should fully understand this, as laid out in Jonathan C. Lipson, "Understanding Failure: Examiners and the Bankruptcy Reorganization of Large Public Companies", 84 Am. Bankr. LJ 1, 2010, which he summarized the data in 27 cases where examiners reported -- were appointed and noted the high cost of examiners in large cases by and large, the highest being $250 million; the Enron examination being around $100 million.

Examiners also, by statute, don't have the power to do any follow-up on their examination. That is, they can't bring the claims that they find. Other parties have to bring them. Other parties may also disagree with the report of the examiner, which is just that, a report by an objective third-party, based on the fact that he or she uncovers. Other parties may have uncovered their own facts or may disagree with the examiner's conclusion. So at best, an examiner's report is guidance. Sometimes it is very clear guidance; sometimes examiners also can act as an objective third-party to try to bring together the parties

in interest in the case, who may have a different view as to the merits of the claims at issue.

That clearly was the situation in In Re Cenveo, my case that Professor Lipson uses as a precedent for the relief that he is requesting here. Notwithstanding the fact that in that case, the request for an appointment of an examiner was made in the second week of the case, where there was substantial disagreement among the parties as to who should be conducting an investigation, whether it would be a committee, whether it be the debtors, through an independent director. And I wanted to nip that in the bud by appointing a person who would look over the shoulders of both of them and work with them to get to a fair result, which actually happened.

I will note that those parties were all members of the small group of professionals that the motion refers to as often practicing in bankruptcy cases. They seemed to conduct the process with integrity. And of course, it was recommended as one by Professor Lipson, who also, I will note, thanked, in his preface to the article that I cited, numerous bankruptcy judges and professionals whose work he is now challenging, as I previously summarized, and as his colleague, Mr. Levitin, is challenging.

In this case, we are weeks away from a confirmation hearing on a plan that has been the subject

just to extensive mediations, following an unprecedented examination by both the Debtors and by the Official Unsecured Creditors Committee, which gave access to its investigation to the key participants in this case, who were not "a small group of case insiders," but representatives of the 48 states that have asserted claims against the Debtors. Those are clearly independent parties who take their duties extremely seriously.

All but one of the groups involved in the two mediations have agreed to the plan. That one group, I take very seriously, the so-called Nonconsenting States Group. They are very well represented. They are very sophisticated, being the Attorney Generals of their respective states, and they are now engaged in a third mediation, which I directed to see if the plan, including the settlement with the Sacklers can be improved.

That mediation, as is appropriate given the almost two years in these cases, is on a short timetable. One of my colleagues who, in addition to the two other mediators in this case, I view as one of the best mediators in the country, particular with regard to issues like this. Judge Chapman is conducting that mediation. It will be concluded before plan confirmation, although it may not be concluded until shortly before plan confirmation.

In that context, the request for an appointment of

an examiner here, even as limited by Professor Lipson this morning, to the topic of whether the Debtors' board, and more specifically, the special committee was independent of the Sacklers and made its own determination when directing the Debtors to file and seek confirmation of the plan that is now up for confirmation is not in the interest of creditors and other interests of the estate.

I'm not even considering here whether it would be in the interest of the equity security holders. Obviously, that's of minimal importance to me in this context. Why do I say it's not? First, it is largely irrelevant, if not entirely irrelevant, given the role of the other fiduciaries in these cases that I've already detailed and it is well laid out in the record and, frankly, simply not addressed in any meaningful way by Professor Lipson, other than to disparage it or question it without evidence and belied by the fact that the very work would be the work that he believes his examiner should investigate to see if, not that the investigation itself was thorough, but whether it had "integrity," whatever that means, and he was not able to define it.

Secondly, this request comes very late in the case, as I've noted, and while perhaps the most sensitive negotiation in the case is going on. It beggars belief that Professor Lipson would not believe that the appointment of

an examiner might adversely affect this negotiations is, in fact, the case in any negotiation, and certainly in a negotiation over a Chapter 11 plan, that as the closer one gets to court, the more parties get serious about negotiations and actually put their best deal on the table.

If they believed they could wait and see how an examiner would come out on "the integrity of the process", it's human nature that people will wait and not use what really is important in this case, that mediation productively.

In that context, in addition to the delay and irrelevance of the inquiry, given the roles played by the states, the governmental entities, the Indian tribes, the committee and the subcommittee and the other unofficial committees in this case, the cost simply isn't warranted, nor is the delay warranted. That is particularly so since it is clearly, I believe, everyone's hope in this case that funds go out promptly to abate the opioid crisis.

Professor Lipson also relies on, as I said, Section 1104(c)(2) of the Bankruptcy Code, which again states that, "The Court shall appoint an examiner to conduct an investigation of the Debtor as is appropriate if the Debtors' fixed, liquidated, or unsecured debts, other than debts for goods, services, or taxes, or owing to an insider exceed $5 million."

There is a dispute in the case law as to whether this provision is mandatory, i.e., that an examiner must be appointed if the fixed, liquidated, or unsecured debts, other than debts for goods, services, or taxes, or owing to an insider exceed $5 million. The dispute is not a new one. It goes back at least to 1984 where the issue was discussed at length in In re. GHR Companies, 43 B.R. 165 (Bankr. D. Mass. 1984), where that Court that the appointment was not mandatory, in large part, because of the Court's assessment of the legislative history and background to the section and the facts present in that case, as well as the statutes' direction to conduct an investigation as is appropriate.

In that case, the Court went through an extensive analysis of the legislative history, which I will not repeat here, which reflects, however, I believe, a couple of important points.

First, in enacting the 1978 Bankruptcy Code, Congress was considering prior practice in which for public companies above a certain debt threshold, a trustee was appointed automatically, and the SEC had an important statutory role, to protect the interests of public debtholders and public shareholders. Congress believed that that level of third-party supervision was actually, as borne out in practice, not a good thing and, therefore, decided to change those provisions of the Chandler Act in the 1978

Code.

There was a considerable back and forth as to whether an examiner would need to be appointed and, if so, under what circumstances in such cases, and there was substantial support for the notion that the Court should discretion to appoint both an examiner and a trustee. Nevertheless, the statute came out as it was drafted, which in one paragraph, (c)(2), appears to make the appointment mandatory, but then in the overall provision pertaining to the investigation makes the nature of the investigation as is appropriate, i.e., in the discretion of the Court.

It is clear from the legislative history, and as discussed in the In re. GHR Companies, that Congress was focused largely on public companies with public debt and public equity or public equity, although the statute itself does not limit it to public debt, but rather instead to fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider.

It's probably safe to say that Congress did not have in mind when it drafted this a case where the claims asserted, other than the claims for goods, services, or taxes, would not be funded debt, but instead would be debt for personal injury and the like.

The Court's continued -- well, I would cite Professor Lipson's article, in addition to the legislative

history discussed in the GHR case, which it goes through this similar analysis and notes, among other things, that the provision as drafted was "ASOP" to the SEC; that quote is from an unnamed party who Professor Lipson said was involved in the negotiations of the language that appears now in the Code.

The issue of whether the appointment is mandatory proceeded and still proceeds to this day in the case law and commentary. Indeed, as originally drafted in prior editions of the leading treatise on bankruptcy, "Collier on Bankruptcy," the section suggested that the Court had discretion under (c)(2).

The current discussion in Collier is somewhat schizophrenic. It now states in, again, paragraph 1104.03(2)(b) headed, "The Court's lack of discretion once 5 million threshold is met," that "Section 104(c)(2) does not leave any room for the Court to exercise discretion about whether an examiner should be appointed as long as the 5 million threshold is met and a motion for an appointment of an examiner is made by a party in interest."

It then goes on to state, however: "Nevertheless, the mandatory nature of this provision was not intended and should not be relied on to permit blatant interference with the Chapter 11 case or the plan confirmation process. Failure to make a timely request for the appointment of an

examiner may provide the Court with a basis for denying the request on the ground of laches, nor should the mandatory nature of the provision be used to allow one group of creditors or interest holders to obtain a protagonist supporting its litigation position under the guise of an investigation. In addition, where the parties do not seek mandatory appointment under Section 1104(c)(2), but rather, discretionary appointment, the appointment is not mandatory."

The editors then go on to state: "Alternatively, a Court might grant their request for an examiner, but so limit the role assigned to the examiner that substantial interference will be prevented. As noted above, Section 1104(c) states that the Court shall order the appointment of an examiner to conduct such an investigation of the Debtor as is appropriate."

"The limitations and prescriptions regarding the scope of the investigation are subject only to the sound discretion of the bankruptcy judge. For example, the scope of the examiner's duties is properly limited to an investigation, rather than an evaluation. In addition, or as an alternative, the Court can limit in advance the compensation to be awarded to the examiner and limit the expenses as well."

"Finally, the Court may permit the confirmation

process to continue and perhaps even conclude prior to receipt of an examiner's report. Citing the legislative history, 124 Congressional Record H-11103, Daily Edition, September 28, 1978." "Accordingly," Colliers goes on to state, "In an appropriate case, it is possible both to comply with the clear statutory provisions and also to consider their practical implications. Again, citing the same legislative history," which to my mind means that the editors say it's mandatory, but not mandatory. The case law reflects that type of division.

Interestingly, Professor Lipson's motion only cites the case law in his favor and ignores cases from this district. I won't. There are indeed many cases that construe Section 1104(c)(2) as requiring the appointment of an examiner when the debt limit is met. They include the only Circuit Court case to have addressed the issue, Morgan Stern v. Revco D.S., Inc. (In re. Revco D.S., Inc.) 898 F.2d (6th Cir. 1990).

They include a number of other decisions, including Loral Stockholders Protective Committee v. Loral Space & Communications Ltd. (In re. Loral Space & Communications Ltd), 2004 WL 2979785 (S.D.N.Y. Dec. 23, 2004) and In re. Schepps Food Stores, Inc., 148 B.R. 2730 (S.D. Tex. 1992), as well as In re. UAL Corp., 307 B.R. 8085 (Bankr. N.D. Ill. 2004).

I will note though that the two District Court cases that I just cited recognize there are exceptions to the mandatory nature that they found, including based on delay, the timing of the motion that is, and the motives or underlying purpose of the request. In addition, each of those Courts recognize the Court's substantial discretion, as does Colliers, in deciding what is an appropriate examination under the statute.

There are many decisions that go the other way, including many more recent ones. In re. PG&E Corp., 2020 WL 9211190 at page 3 (Bankr. N.D. Cal. July 6, 2020), In re. Dewey v. LeBoeuf LLP, 478 B.R. 627, 639 (Bankr. S.D.N.Y. 2012), In re. Residential Capital LLC, 474 B.R. 112, 121 (Bankr. S.D.N.Y. 2012), U.S. Bank National v. Wilmington Trust Company (In re. Spansion, Inc.) 426 B.R. 114, 128 (Bankr. D. Del. 2010), and unreported decisions where there are lengthy bench rulings, which I will go through in a moment.

The Spansion case by Judge Carey reflects rulings by some of his colleagues, including Judge Walsh, Judge Walrath, and Judge Sontchi. I will note that the Residential Capital case also quotes at length an unpublished decision bench ruling by Judge Chapman in the Innkeepers case, all for the proposition that the Court has discretion, albeit not perhaps as extensive discretion as

under (c)(1) if the debt limit is, in fact, exceeded under (c)(2).

Judge Carey in Spansion actually stated the obvious, "If the Court concludes that there is no basis for an appropriate examination, what is the point of appointing an examiner just to sit there and do thing," highlighting, I think, the compromise that Congress made when it enacted this provision, i.e., 1104(c), and I believe the desire of those parties to just leave it up to the Court as to what is appropriate if there is no basis to not appointment an examiner.

In the Residential Capital case, Judge Glenn stated the requirement for the appointment of an examiner under 1104(c)(2) as one requiring, "That a Court order the appointment of an examiner when (1) no plan has been confirmed, (2) no trustee has been appointed, (3) the Debtor has in excess of 5 million in fixed debts, and (4) the facts and circumstances of a case do not render the appointment of an examiner inappropriate," 474 B.R. 121.

He then goes on to lay out the circumstances under which such an appointment would not be appropriate. I might disagree with him as to the burden of proof on that issue. I think probably those opposing the appointment would need to show it.

But if they do show it, I agree with him that if,

in fact, the same investigation or substantially the same investigation is well underway already either by an estate fiduciary or by a third party with clearly a strong interest to pursue that investigation, one should ordinarily believe that the examination would be inappropriate; that is, the appointment of an examiner to conduct a duplicate examination would be inappropriate, which frankly, is common sense.

He also notes the timing points that I've already mentioned that were raised in a number of cases, including the Loral opinion that I've cited, the Schepps opinion that I cited, and In re. Bradley Stores, Inc., 209 B.R. 36, (Bankr. S.D.N.Y. 1997).

It's also worth quoting from a lengthy transcript by Judge Walrath in the Washington Mutual bankruptcy case, which is also cited in the Residential Capital opinion as Judge Walrath says:

"As I recently ruled orally...," so you can't really on it, but I will follow it myself..., "I do believe that 1104(c)(2) gives the Court some discretion, even if the debt level is reached, and the discretion is that the Court has the discretion to determine what appropriate investigation of the Debtor should occur, and that if the Court determines that there's no appropriate investigation that needs to be conducted, the Court has the discretion to

deny the appointment of an examiner."

"The Courts have looked at various factors in determining whether an appropriate investigation is warranted. They include whether, that same investigation has already been conducted by other parties. They have looked at whether the appointment of an examiner will increase costs and cause a delay with no corresponding benefit, and they look at the timing of the motion. They look at whether the motion is a litigation tactic, which includes consideration of the timing, not just how soon it is in a case, but whether it is timed such as to evidence a litigation tactic."

In that case, Judge Walrath stated that it was a very close call as to whether to appoint an examiner since she did not find that it was a litigation tactic, but that she concluded that "The appointment of an examiner here really would -- an examiner really would only have the task of reviewing what others have already done. I don't think there's any original investigation left to be done, so I think that's just a waste of assets."

"Secondly, I think the equity committee, which was moving for the appointment of an examiner, is fully able to conduct the investigation that it seeks to have the examiner conduct. It has the benefit of Rule 2004. It has the benefit of the discovery rules because there are contested

matters presently and anticipated in which the equity committee could fully avail itself of that discovery."

That's found at In re. Washington Mutual, Inc., 08-1229, Docket No. 3699-mfw, the hearing transcript at page 97 through 101.

Other courts have actually done what Collier suggests and simply appointed an examiner but then had them do nothing, or in the case of In re. Erickson Retirement Communities, LLC, 425 B.R. 309, 317 (Bankr. N.D. Tex.), the Court appointed an examiner but then gave that person no meaningful duties as there was no sound purpose for it and said, "Perhaps if the Court does not confirm the plan, an examiner could do something."

Finally, the objectors properly focus on the Dewey LeBoeuf case, which I previously cited; again, it's at 478 B.R. 627 (Bankr. S.D.N.Y. 2012). There, the Court concluded that it had the discretion under Section 1104(c)(2) not to appoint an examiner under those circumstances present there, given that the investigation that the examiner was sought to be done had already been conducted or was nearly complete, and the appointment of an examiner would upend the settlement process and the consideration of the settlement in connection with the confirmation hearing, in essence, obtain an adjournment of that hearing when, in fact, the Court had set all of those issues up to be determined before

it.

The issue, again, that the motion seeks to have be the subject of the examination is the independence of the Debtor, its board and, more specifically, the special committee of the board in submitting the plan for confirmation.

This is, frankly, different than the issues raised in the motion and the reply, which focus on the entire scope of the negotiation of the plan, even before key parties who are supporting the plan were in existence. The motion is premised upon the theory that the pre-bankruptcy settlement framework embodied in the term sheet negotiated between, on the one hand, the Sacklers and the Debtors -- then not Debtors, just Purdue -- as defendants in multi-district litigation.

And the claimants in that litigation, or at least certain of the claimants in that litigation, including the so-called consenting states and the lead personal injury attorneys' committee, was, in fact, a structure that determined the outcome leading to the plan and, therefore, every step from that structure to this moment -- and conceivably, the future -- need to be investigated by the examiner to determine the integrity of the process, using the words of the motion and the reply.

This completely ignores that the Debtors are a

different side of the settlement at this point. When they become Debtors, they are fiduciaries for their estates and creditors. They then have claims that otherwise could be asserted only by creditors, namely fraudulent transfer, preference, and veil piercing claims, and they're subject to the supervision of this Court.

It also ignores the creation of the official unsecured creditors' committee, which obviously didn't exist before the commencement of these cases, and its fiduciary duties. It also ignores that the framework settlement was not a settlement, it was merely a framework, subject to definitive documentation and extensive due diligence, as was made clear on the first day of this case and basically in every hearing thereafter by the parties and by me.

Given all of that, it appears to me to be completely irrelevant and wasteful to investigate the Debtors' negotiations of the plan. The motion and Professor Lipson really have no other evidentiary support for the contention that the post-petition Debtor was in any way controlled by the Sacklers, let alone that the special committee was.

Again, it's hard for me to see whether the issue itself is particularly relevant, given that there are multiple parties in interest who conducted extensive investigations of claims against the Sacklers besides the

Debtors, although, of course, the Debtors did too. Indeed, the announcement by the Attorney General of the State of New York that she had uncovered in excess of $10 billion of claims for potential avoidable transfers by the Sacklers came from uncovering the first page of the Debtors' extensive report detailing those transactions.

There is no real suggestion, except wholly inappropriate innuendo, some of which I addressed during oral argument, that the special committee had some sort of proclivity not to act as independent fiduciaries. But again, even if they did, of which there's no evidence, there were plenty of other fiduciaries adamantly in opposition to the Sacklers, well represented, who actively and, in fact, I think uniquely in bankruptcy practice engaged in I believe the most thorough investigation of those claims one can imagine.

Of course, they considered whether the process itself was affected by the Sacklers' role as shareholders of the Debtor and, of course, if they had reached that conclusion, I would have heard it and, of course, if that were true, I would have appointed a trustee or otherwise directed the Sacklers to have no role. But again, it beggars the mind to believe that Professor Lipson is sincere when he says that you cannot rely upon the creditors' committee to have done that inquiry.

This was not a point he raised in his objection to the disclosure statement, yet he relies on the disclosure statement as not discussing it to his satisfaction. Frankly, it would have been a five-minute discussion at the disclosure statement hearing if he had. I would have asked the Debtors, I would have asked the committee and I would have asked other parties in interest, do you have any reason to believe that the Sacklers are directing or influencing the special committee or the Debtors in their putting forth this plan. Although frankly, I believe again the answer to that question is obvious: if the committee did have that belief, it would have raised it, knowing how active, diligent, and committed the members of the committee and its professional are.

The Dewey and LeBoeuf case also deals with a second aspect of the issue under Section 1104(c)(2); that is, Judge Glenn in that case analyzes whether the debts in that case as asserted -- and the movant does have the burden of proof on this -- by the movant were, in fact, fixed, liquidated, and unsecured, other than debts for goods, services, or taxes or owing to an insider, in excess of $5 million. Obviously, that's relevant because of the number of cases that state that, at least in most circumstances, the Court must appoint an examiner.

As Judge Glenn states in Dewey LeBoeuf, the $5

million requirement is typically satisfied where there is outstanding unsecured bank debt or outstanding publicly issued debentures in an aggregate sum in excess of $5 million. He goes on to state, "While there is little case law on what constitutes a fixed and liquidated debt for purposes of Section 1104(c)(2), Blacks Law Dictionary defines fixed debt as, "Generally a permanent form of a debt, commonly evidenced by a bond or debenture; long-term debt".

Judge Glenn goes on to state, "Conversely, it defines a contingent debt as 'A debt that is not presently fixed but that may become fixed in the future with the occurrence of some event,'".

Lastly, it defines a liquidated debt as "A debt whose amount has been determined by agreement of the parties or by operation of law,".

Finally, Judge Glenn states "In other bankruptcy contexts, a contingent debt has been defined as one which the Debtor will be called upon to pay only upon the occurrence or a happening of an extrinsic event which will trigger liability. A debt is liquidated where the claim is determinable by reference to an agreement or by a simple computation", citing Mazzeo v. United States, In re. Mazzeo 131 F.3d 295, 303 through 05, (2d Cir. 1997).

Generally, these types of issues don't come up in

the 1104 context, but rather, as to who is an eligible petitioner to commence an involuntary case under Section 303 of the Bankruptcy Code. And certainly, contemplating the legislative history of this section, which was focused on funded debt, as well as the Section 303 case law and the Dewey LeBoeuf case, which addressed contingencies and concluded that the debts that were being asserted did not fall into the category of "fixed, liquidated unsecured debts."

There is a substantial question in my mind here as to whether the only debt that is asserted by Professor Lipson as triggering this provision, in fact, falls within the actual language of it. It is the debt set forth in paragraph 6 of the Court's order pursuant to 11 U.S.C. Section 105 and Federal Rule of Bankruptcy Procedure 9019, authorizing and approving settlements between the Debtors and the United States.

That settlement contemplated various judgments and payments to be made to the United States in paragraphs 3 through 5, all of which are contingent upon the District Court accepting the plea agreement at the sentencing hearing.

And then there is the debt that Mr. Lipson relies on set forth in paragraph 6, which states that "The United States shall have an allowed unsubordinated, undisputed,

non-contingent, liquidated unsecured claim against PPLP, that is Purdue, in the amount of $2.8 billion arising from the DOJ's civil investigation, defined as the civil claim."

If you just stopped there, obviously Professor Lipson would be right. But the paragraph continues, "Provided that if PPLP..." and then I'll skip the first proviso and go on to, "... provided that if a plan materially consistent with the terms of the civil settlement agreement is not confirmed", and then goes on to say, "In the event of voluntary dismissal or a conversation of the cases, that is the bankruptcy cases, or in the event the Debtors' obligation under the civil settlement agreement are voided for any reason, the United States may elect in its sole discretion to rescind the releases in the civil settlement agreement and bring any civil and/or administrative claim action or proceeding against the Debtors where the claims that would otherwise be covered by the release provided in paragraph III.3 of the civil settlement agreement or to have an undisputed non-contingent and liquidated allowed unsecured claim against Debtors for the full amount of the DOJ's civil proof of claim."

To me, that is a material contingency that, quite arguably, takes this without the range of a fixed liquidated unsecured debt.

All of these conclusions would lead one in a

normal situation to deny the motion outright. I am troubled though, again, by the unsupported and inflammatory allegations in the motion that really have little or nothing to do with the relief that was actually pursued today, i.e., the relief sought.

In particular, I am concerned that based upon those unwarranted and unsupported statements regarding the Debtors' special committee; that the special committee, which as far as I can tell has, in fact, been independent, will somehow always have a taint over it. We're talking about actual people who I think have already been slandered in this motion, as I've noted during oral argument.

It's also clear to me that many provisions of this motion are written in a way to be easily quoted and misconstrued by the media, which again, casts a pall or would cast a pall on these people. That shouldn't have happened, but it has happened.

As everyone agrees, this is a case that elicits properly very emotional reactions. It is not a case about forgiveness. It is not even a case about forgetting, and (indiscernible) said, "Many more people just forget or try to forget than forgive."

But it is a case where I believe hundreds of people with the best of intentions have worked tirelessly to reach a result that best addresses the claims against Purdue

and Purdue's rights against the Sacklers and, frankly, third-parties rights against the Sacklers. Whether that result is enough for me to confirm the plan has not been decided.

I will note regarding my concern about how the public views this case that, notwithstanding that obvious fact or the obvious fact that this is not a criminal case, I continue to get correspondence from people who I truly -- well, being sorry for them is not enough, I mean, what they've gone through is inexpressible -- but who believe nevertheless because of what they have read that this is a criminal case that will somehow absolve the Sacklers, both criminally and morally. That is not what this case is about; it never has been about that, nor could it be.

On the other hand, as I said, hundreds of people have worked tirelessly to try to maximize the recovery to undo the injuries that have taken place over decades, and how that is perceived is important because most of the money will go to programs to abate the opioid crisis. If people believe that somehow that process was not conducted with integrity, that effort is somehow tainted.

I believe that Professor Lipson could have gotten to this result much more easily than spewing out what he did in his pleadings, but I am concerned that if I do not appointment an examiner, the next press release will be,

"Court refuses to appoint examiner to determine whether process was fair," and not add, "because there was no evidence submitted to show that it wasn't."

So my inclination here is to appoint one person on his or her own, not with a team, to look at one issue, which is whether the board, and more specifically the special committee, in directing that the Chapter 11 plan before me be filed and pursued was acting independently and not under the direction or influence of the Sacklers.

That appointment will not -- and I repeat not -- involve an assessment of the prior negotiations or of the 99 million pages of the investigation conducted by the committee or the other millions of pages of the investigation conducted by the Debtors under the auspices of the special committee. It will not assess the quality of that work. It will assess independence.

In essence, the Iridium and TMT Trailer factor that I will separately assess if the plan -- when the plan is brought before me to determine whether it should be confirmed. The Debtors contend that it is enough that I assess that factor based on the evidence, and if this case were not already tainted by this pleading, I think that is the right result, but I believe an examiner should be appointed to do that task.

The Debtors stated that the ad hoc committee of

non-consenting states is taking discovery on that issue, among other issues. The examiner will have access to that discovery. He or she can also interview parties in interest, including, of course, the special committee, and I will expect a report on that issue before the commencement of the confirmation hearing.

I will also expect a report about the cost of that process and of this motion, so that everyone in this case can know the cost and what was not spent on abating the opioid crisis. I will set the budget for that process by the examiner, i.e., the examiner's own cost, at $200,000, which is essentially my salary; that should do it. I don't expect the examiner to need another lawyer, except perhaps to put in his or her fee application and to review the order retaining him or her, although I expect that the U.S. Trustee will appoint a senior person with experience in Chapter 11 cases involving corporate governance or experience with corporate governance in Chapter 11 cases.

The concept asserted in these pleadings and in Professor Levitin's article that somehow the people that know best those issues are tainted because they do, leading to the inevitable result that one should appoint a neophyte is, of course, ludicrous. And, in fact, at least as far as Professor Lipson is concerned, I trust he continues to seek the comments and input from such people when he writes real

articles, as opposed to press releases to the "Wall Street Journal."

I don't expect there to be a lengthy debate or scrutiny before it's submitted to me of the order. I will ask the Debtors to draft it, since I don't trust Mr. Lipson's drafting since I've read about 20 different versions of the task that he wanted the examiner to undertake. But, of course, the Debtors should provide him with a copy before it's submitted to the Court so he can make sure it's consistent with my ruling. Copies should also be circulated to the other parties, but it should not deviate from my ruling.

Lastly, I am, as I said, concerned about how this ruling may affect the critical mediation that is ongoing. I trust, having had Mr. Troop appear before me throughout this entire case -- and by the way, Mr. Lipson, I don't believe Mr. Troop has ever appeared before me in an engagement like this before, unlike the two times that Mr. Kaminetzky has and the one time that Mr. Huebner has -- and I trust that his clients will recognize that this investigation is largely, if not entirely, irrelevant to their negotiations.

However, I'm directing the parties to let Judge Chapman know that if they point to it as a reason to delay the mediation or to hold back if she asks them to put their best offer on the table, she should tell me because I

believe that will be in bad faith. Now, again, I don't believe that any of the parties to the mediation would do that, but I want to be clear that they shouldn't.

So any questions from the parties?

MR. HUEBNER: Yes, Your Honor, just to clarify one this if I may. It's Marshall Huebner. So as I think we've made clear in every document ever, it was the special committee that had the authority exclusively vested in it. The other board members did not participate, they were never in the room, and the special committee by and large had, you know, a separate dedicated team and the like. I'll just give you the one from --

THE COURT: The inquiry should be of the inquiry should be about the special committee, if anyone else had an undue influence them on behalf of the Sacklers, you know, it starts with the special committee.

MR. HUEBNER: I was just confirming that one very small, tangled point, Your Honor. Obviously, that the reason we had a special committee and, obviously, I wouldn't say we welcome it to approve at a confirmation in any event, but obviously, we certainly understand and are, you know, ready to engage with an examiner appointed to put the special committee through the questions that Professor Lipson has asked, and I hope that there will be quite satisfactory answers for all concerned.

THE COURT: And one other point, although this probably goes without saying also. I've said that the examiner will have access to the discovery taken by the ad hoc group of non-consenting states; that will be subject to the protective order. In my experience -- and I don't believe there's ever been a case otherwise, in fact, there are a number of reported opinions where examiners say that the only thing discoverable from them is their report -- what the examiner is privy to as far as discovery and the like will be subject to that protective order, and what will be publicly released will be his or her report.

So obviously, Mr. Troop, it's the raw discovery; it's not your side's analysis of it. You can share that if you want, but you don't have to go beyond that obviously. I see you're nodding there.

MR. TROOP: Sorry, Your Honor. Understood, Your Honor.

THE COURT: Okay, very well. So any other questions? I see the U.S. Trustee, there she is, Miss Riffkin.

MR. TROOP: Your Honor, if I may.

THE COURT: No, I think Miss Riffkin, you're on mute I think still.

MS. RIFFKIN: Yes, I got off of mute. Thank you, Your Honor. And we are ready to appoint an examiner once we

have the order and we'll start the process right away.

THE COURT: Okay, very well. Thank you.

MR. TROOP: Your Honor, if I may, one quick clarification. Will the examiner be permitted to meet and confer with counsel to the unsecured creditors' committee and the other major participants in this case?

THE COURT: To get their sense of the independence, not to investigate their integrity.

MR. TROOP: Correct, correct. Thank you.

THE COURT: All right.

MR. TROOP: Thank you, Your Honor.

THE COURT: All right, very well. Okay. Anything else for today? No? All right. Thanks very much.

MR. TROOP: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 3:02 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
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